

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

WILLIAM M. BELITSKUS, ANNE)
GOEKE, THOMAS ALAN LINZEY,)
BARBARA KNOX, JOHN STITH,)
ERIC PRINDLE, JENNARO PULLANO,)
RALPH NADER, NADER 2000)
PRIMARY COMMITTEE,)
PENNSYLVANIA GREEN PARTY, and)
WILL DONOVAN III,)

Civil Action No.

Plaintiffs,)

v.)

KIM PIZZINGRILLI,)
in her official capacity as Secretary of State)
of Pennsylvania, and)
RICHARD FILLING,)
in his official capacity as the Commissioner)
overseeing Pennsylvania's Bureau of)
Commissions, Elections and Legislation,)

Defendants.)

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

The Plaintiffs seek to enjoin Defendants from enforcing the Commonwealth of Pennsylvania's requirement at 25 P.S. §§ 2873, 2911, 2913, and 2914 that all candidates for elected office pay a filing fee in order to gain access to the ballot, without any provision for a waiver of such fee or alternative means of ballot qualification. The United States Supreme Court has held that such filing fee systems violate the Equal

Protection Clause of the Fourteenth Amendment to the U.S. Constitution. *Bullock v. Carter*, 405 U.S. 134 (1972); *Lubin v. Panish*, 415 U.S. 709 (1974).

The Plaintiffs include candidates in the 2000 election for public office in Pennsylvania who are otherwise qualified but would suffer hardship from paying the respective filing fees for the offices they seek; a 2000 presidential candidate and his campaign committee; a voter who wishes to support candidates for whom the filing fee creates a hardship; and a political party in Pennsylvania, many of whose candidates and members are drawn from the less affluent segment of the Pennsylvania community. All of the Plaintiffs will suffer irreparable injury if the Defendants enforce the unconstitutional filing fee requirements and, thereby, force candidate Plaintiffs to choose between suffering financial hardship or forgoing their places on the 2000 general election ballot.

STATEMENT OF FACTS

The Commonwealth of Pennsylvania requires candidates for public office to pay a filing fee in order to qualify for the ballot. 25 P.S. §§ 2873, 2911, 2913, and 2914. These fees range from \$5 to \$25 for local offices; \$100 for State Senator, State Representative, and most offices filled by county-wide or city-wide vote; \$150 for U.S. Representative; to \$200 for the U.S. presidency and any statewide office. 25 P.S. § 2873.

There is no means provided by Pennsylvania law for a candidate to qualify to appear on the ballot without paying these fees. There is no waiver for candidates who would face financial hardship from having to pay these fees, nor is there an alternative means for a candidate to qualify for the ballot. Even those candidates who satisfy the

stringent signature requirements of Pennsylvania law are required to pay the filing fees as well.

Candidates of political bodies¹ seeking to appear on the 2000 general election ballot for President, U.S. Senator, U.S. Representative and all state offices must submit nomination papers with required signatures along with their filing fees to the Pennsylvania Secretary of State's office by August 1, 2000.² Candidates choosing to file their nominating papers earlier than the August 1, 2000 deadline, in order to allow for sufficient time to collect additional signatures, if necessary, must pay the filing fee at that same time. 25 P.S. § 2873 (b.1).

The plaintiffs include qualified candidates who have met all of the constitutional requirements for public office, will have obtained all of the required ballot petition signatures before August 1, 2000, and would be eligible to run for public office but for the difficulty in paying Pennsylvania's filing fee for ballot access. All are seeking election as candidates of the Green Party of Pennsylvania. See Declarations of Plaintiffs Belitskus, Goeke, Linzey, Knox, Pullano, Prindle, Stith, and Nader, attached as Exhibits A-H.

The majority of the candidate plaintiffs have no or little income and small or empty campaign coffers. For example Plaintiff Eric Prindle, who seeks a place on the

¹ Pennsylvania law distinguishes between "political parties" eligible to participate in the Pennsylvania primary and other "political bodies". 25 P.S. §§ 2831. Candidates of political parties seeking a place on the primary ballot must file nomination petitions and filing fees, 25 P.S. § 2873, while candidates of political bodies seeking a place on the general election ballot must file nomination papers with the same offices, and must pay the same filing fees. 25 P.S. § 2911, 2913, 2914. The Pennsylvania Green Party is a "political body" as defined by § 2831.

² This deadline was established by consent decrees entered into by the Secretary of the Commonwealth in the U.S. District Court for the Eastern District of Pennsylvania on June 15, 1984 in the case *Hall v. Davis*, Civ. No. 84-1057 (E.D.Pa. 1984).

ballot for State Representative for the 85th district, is a Susquehanna University student who works at the university's library for \$5.15 an hour during the summer and during the school year works only five hours a week as a writing tutor. He has less than \$50 in his campaign account. Paying the \$100 filing fee would cause him significant hardship. Plaintiff William M. Belitskus would also face hardship in paying the \$150 fee to appear as a candidate for U.S. Representative, given that he is a homesteader and does not receive any monetary compensation for work that he does. Other plaintiffs face similar obstacles to paying the filing fees.

Moreover, the impact of the filing fees is not limited to plaintiffs in this case. An employee of the Bureau of Elections, Commissions and Legislation has admitted to counsel for Plaintiffs that persons seeking a place on the ballot have called that office stating they would face difficulty filing fees and asking if there was an alternative means of qualifying for the ballot, and that these persons have been told there was no alternative to paying the fee. See Declaration of Bonita Tenneriello, attached as Exhib. I.

The candidate Plaintiffs are currently planning to file their nominating papers with the Secretary of the Commonwealth on July 24, 2000 in order to ensure the validity of these papers and to leave time to collect additional signatures if necessary. Because the Secretary of the Commonwealth will not accept these papers without the filing fees,³ the candidate plaintiffs will be irreparably harmed if the Secretary of the Commonwealth is not enjoined immediately from enforcing the filing fee provisions.

³ Plaintiff John R. Stith, who in addition to running for State Representative is also coordinating ballot access for Pennsylvania Green Party candidates, has been told by the Bureau of Commissions, Elections and Legislation that nomination papers will not be accepted unless they are accompanied by full payment of the filing fees.

Plaintiff Pennsylvania Green Party is an association of Pennsylvania citizens who wish to vote for and otherwise support the candidate plaintiffs and other Green Party candidates for local, state and national office. Its members and base of support include low-income voters who are among the less affluent segment of the Pennsylvania community. Plaintiff William Donovan III is a registered voter residing in State College, Pennsylvania, who is a student at Pennsylvania State University and works part time. He supports, and intends to vote for candidate plaintiffs Stith, Goeke, Linzey, Knox, Belitskus, and Nader. Because the filing fees impose an unconstitutional hardship on the candidate plaintiffs, they also unconstitutionally harm the ability of Donovan as well as the Pennsylvania Green Party and its members to vote for the candidates of their choice. See declaration of John Stith for the Pennsylvania Green Party, Exhib. J, and William Donovan III, Exhib. K.

LEGAL ARGUMENT

The plaintiffs are entitled to a temporary restraining order (TRO) and preliminary injunction because (1) they have a reasonable likelihood of success on the merits; 2) they will suffer irreparable harm in the absence of relief; 3) there will be little or no harm to the other parties if relief is granted; and 4) the public interest supports a grant of relief. *Alessi v. Commonwealth of Pennsylvania Department of Public Welfare*, 893 F.2d 1444 (3rd Cir.1990); *Johnson & Johnson Orthopedics, Inc. v. Minnesota Mining & Manufacturing Company*, 715 F.Supp. 110, 112 (D.Del. 1989).⁴

⁴ The standard for a preliminary injunction and a TRO is the same. *Johnson & Johnson* at 111-112. While the degree of probability of success on the merits required to obtain such relief varies among courts of appeal, the U.S. Court of Appeal for the Third Circuit requires only a “reasonable likelihood” of success. *Johnson & Johnson* at 112 n. 1.

I. Plaintiffs are likely to succeed on the merits of their claims.

The U.S. Supreme Court has unequivocally held on two occasions that a state which charges a fee for access to its ballot must provide an alternative for candidates unable to pay the fee. *Bullock v. Carter*, 405 U.S. 134 (1972); *Lubin v. Panish*, 415 U.S. 709 (1974). A system requiring the payment of filing fees with no alternative “falls with unequal weight on voters, as well as candidates, according to their economic status,” and thereby violates the equal protection clause of the Fourteenth Amendment to the U.S. Constitution. *Bullock*, 405 U.S. at 144. More recently, the Supreme Court has reaffirmed that “[t]he basic right to participate in political processes as voters and candidates cannot be limited to those who can pay for a license,” *M.L.B. v. S.L.J.* 519 U.S. 124, 117 S.Ct. 555, 568 (1996)(citing *Bullock*, 405 U.S. at 144-49 and *Lubin*, 415 U.S. at 718).

Courts following *Bullock* have invalidated filing fees when there was no indigency waiver or alternative means of qualification: *Brown v. North Carolina State Board of Elections*, 394 F.Supp. 359 (W.D. North Carolina 1975); *Dillon v. Fiorina*, 340 F.Supp. 729 (D. New Mexico 1972); *Harper v. Vance*, 342 F.Supp. 136 (N.D. Alabama 1972); *Fair v. Taylor*, 359 F.Supp. 304 (M.D. Florida 1973).

Pennsylvania’s fees, without any waiver or alternative means of ballot qualification, exclude candidates who are otherwise qualified but are unable to pay the fees without suffering hardship. The fees also thereby deny voters the opportunity to vote for candidates of their choice. “The effect of this exclusionary mechanism on voters is neither incidental nor remote. Not only are voters substantially limited in their choice of candidates, but also there is the obvious likelihood that this limitation would fall more heavily on the less affluent segment of the communities, whose favorites may be unable

to pay the large costs required by the Texas system.” *Bullock*, 405 U.S. at 144; *see also* *Lubin*, 415 U.S. at 716 (“The right of a party or an individual to a place on a ballot is entitled to protection and is intertwined with the rights of voters.”); *Anderson et al. v. Celebrezze*, 460 U.S. 780, 786-787 (1983). The availability of a write-in candidacy is not an adequate alternative to constitutional ballot access requirements. *Lubin*, 415 U.S. at 719 n. 5.

A regulation affecting candidate and voter rights in this manner must be “closely scrutinized” and will pass constitutional muster only if it is reasonably necessary to the accomplishment of a legitimate state objective. *Bullock*, 405 U.S. at 144. Because Pennsylvania’s filing fee serves no legitimate state objective it would fail even the most deferential review.

While filing fees may limit the number of candidates appearing on the ballot, they are not a valid means of determining a candidate’s seriousness. *Lubin*, 415 U.S. at 716-717; *Bullock*, 405 U.S. at 145-146.

Filing fees, however large, do not, in and of themselves, test the genuineness of a candidacy or the extent of the voter support of an aspirant for public office. A wealthy candidate with not the remotest chance of election may secure a place on the ballot by writing a check. We have also noted that prohibitive filing fees, such as those in *Bullock*, can effectively exclude serious candidates. Conversely, if the filing fee is more moderate, as here, impecunious but serious candidates may be prevented from running.

Lubin. at 717.

Additionally, Pennsylvania’s stringent signature requirements ensure that only candidates with demonstrated popular support will gain ballot access, even without payment of filing fees. Candidates of political bodies (those not nominated in a party primary) seeking statewide office must gather the signatures of qualified electors equal to

at least two percent of the highest vote cast for any statewide candidate in the last election; others must gather a number equal to at least two percent of the highest vote tally in the relevant electoral district. 25 P.S. §§ 2911 (c). For statewide candidates in the 2000 election that number is 21,739. Indeed, such signature requirements are precisely the type of alternative qualifying measure used in most states to avoid running afoul of *Bullock* and *Lubin*.

The State cannot claim a legitimate interest in having candidates pay the costs of elections, which are a state function. The *Bullock* opinion says of primary elections, “We also reject the theory that since the candidates are availing themselves of the primary machinery, it is appropriate that they pay that share of the cost that they have occasioned.... [T]he costs do not arise because candidates decide to enter a primary or because the parties decide to conduct one, but because the State has, as a matter of legislative choice, directed that party primaries be held. The State has presumably chosen this course more to benefit the voters than the candidates.” *Bullock*, 405 U.S. at 147-48. This logic holds even greater force in the context of a general election, which is an indispensable part of the state’s electoral process.

Thus, Pennsylvania’s filing fees exclude candidates based on wealth and restrict the franchise of voters while serving no legitimate state interest. Under controlling Supreme Court precedent this clearly establishes a violation of the equal protection clause of the Fourteenth Amendment to the U.S. Constitution.

II. Plaintiffs will suffer irreparable harm in the absence of relief.

Being excluded from the ballot because of unconstitutional requirements is, almost by definition, irreparable harm warranting injunctive relief. *Brown v. Chote*, 411

US. 452 (1973) (approving of preliminary injunction where candidate was required to pay filing fee of one percent of first year's salary). As noted above, voters as well as the excluded candidates will suffer, since "[t]he effect of this exclusionary mechanism on voters is neither incidental nor remote." *Bullock*, 405 U.S. at 144

Further, the need for relief is immediate. The plaintiffs' nominating papers will not be accepted without full payment of fees by the August 1 deadline. 25 P.S. § 2873 (b.1). The candidate plaintiffs wish to file their papers on or about July 24, 2000 in order to ensure the validity of these papers and to leave time to collect additional signatures if necessary.

Thus, the continuing enforcement of the filing fee provisions threatens an immediate injury to candidate plaintiffs' right to ballot access and the party and voter plaintiffs' voting rights.

III. There will be little or no harm to the other parties if relief is granted.

As discussed above, the State cannot justify any need for the fees as a means of deterring non-serious candidates and avoiding ballot clutter, given that plaintiff candidates, along with all other candidates, must meet stringent signature requirements demonstrating public support before they are entitled to appear on the ballot. And, as noted above, filing fees are not a valid way of weeding out frivolous candidacies.

IV. The public interest supports a grant of relief.

Almost by definition, there is no greater public interest in a democracy than free and fair elections. "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined."

Williams v. Rhodes, 393 U.S. 23, 31 (1968)(footnote omitted) (quoting *Wesberry v. Sanders*, 376 U.S. 1, 17, 84 S.Ct. 526 (1964). The constitutional right to vote is “a fundamental political right....preservative of all rights.” *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

The right of candidates to ballot access is “intertwined with the rights of voters,” *Lubin*, 415 U.S. at 716, and it is low income voters who are most likely to feel the burden of exclusionary filing fees. *Bullock*, 405 U.S. at 144. In the face of such a clear constitutional violation, the public interest demands the immediate suspension of the fee provisions.

Conclusion

For the reasons discussed above, the Court should grant Plaintiffs’ motion for a temporary restraining order and preliminary injunction.

Respectfully submitted this 17th day of July, 2000,

Bonita P. Tenneriello*
John C. Bonifaz*
Brenda Wright*
Gregory Luke*
NATIONAL VOTING RIGHTS INSTITUTE
294 Washington Street, Suite 713
Boston, Massachusetts 02108
(617) 368-9100

David Kairys

1719 N. Broad Street
Philadelphia, Pennsylvania 19122
Penn. Bar No. 14535
(215) 204-8959

Jordan B. Yeager
Boockvar & Yeager
714 Main Street
Bethlehem, Pennsylvania 18018
Penn. Bar No. 72947
(610) 861-4662

**Application for Admission Pro Hac Vice pending.*