



June 24, 2016

Honorable Lawrence F. Stengel  
United States District Judge  
Federal District Court for the Eastern District of Pennsylvania  
James A. Byrne U.S. Courthouse  
601 Market Street  
Philadelphia, PA 19106

**By Email To: Jocelyn\_Hynes@paed.uscourts.gov**

**Re: *Constitution Party of Pa. v. Cortes*, No. 5:12-cv-02726-LS**

To the Court:

Pursuant to the Court's order entered at the conclusion of the telephonic hearing held on June 24, 2016, Plaintiffs in the above-referenced matter submit this letter brief setting forth precedent demonstrating that ballot access requirements that impose county-based distribution requirements are unconstitutional. Such precedent includes the following:

- *Moore v. Ogilvie*, 394 US 814 (1969) (striking down Illinois law requiring that nomination petitions for independent candidates for president include signatures from at least 200 voters in each of 50 different counties);
- *Socialist Workers Party v. Hare*, 304 F. Supp. 534 (E.D. Mich. 1969) (striking down Michigan law requiring that nomination petitions for new parties include signatures from 100 residents in each of at least 10 counties of the state, and providing that not more than 35 percent of the minimum required number of the signatures may be by resident electors of any one county);
- *Socialist Workers Party v. Rockefeller*, 314 F. Supp. 984 (S.D. N.Y. 1970), *aff'd*, 400 US 806 (1970) (striking down New York law requiring that nomination petitions for minor party candidates for statewide office include signatures from at least 50 voters in each county of the state, with the exception of once very small county);
- *Socialist Labor Party v. Rhodes*, 318 F. Supp. 1262 (S.D. Oh. 1970) (striking down Ohio law requiring that nomination petitions for independent candidates for statewide office include signatures from at least 200 electors in each of at least 30 counties);

- *Baird v. Davoren*, 346 F. Supp. 515 (D. Mass. 1972) (striking down Massachusetts law requiring that nomination petitions for new parties include signatures equal to 3 percent of the last vote for governor, and that no more than one-third of the signatures be from any one county);
- *Communist Party v. State Board of Elections of Illinois*, 518 F.2d 517 (7th Cir. 1975), *cert. denied*, 423 US 986 (1975) (striking down Illinois law requiring that nomination petitions for new parties include 25,000 signatures, not more than 13,000 of which can be from any one county);
- *McCarthy v. Garrahy*, 460 F. Supp. 1042 (D. R.I. 1978) (striking down Rhode Island law requiring that nomination petitions for independent candidates include 1,000 signatures, with at least 25 signatures from each of the state's five counties);
- *Elliott v. Shapp*, No. 76-cv-1277 (E.D. Pa. 1979) (Cahn, J.) (unreported) (striking down Pennsylvania law requiring candidates for President and United States Senator to obtain signatures of 100 registered voters from each of 10 counties);
- *Blomquist v. Thomson*, 739 F.2d 525 (10th Cir. 1984) (striking down Wyoming law requiring that minor party nomination petitions include signatures from at least 8,000 registered electors, a majority of whom could not reside in the same county; and also granting injunctive relief against the enforcement of new ballot access requirements to be applied against the plaintiff minor party in the pending election cycle);
- *Libertarian Party of Nebraska v. Beermann*, 598 F. Supp. 57 (D. Neb. 1984) (striking down Nebraska law requiring that nomination petitions for new parties include signatures of at least one percent of the persons voting in the most recent gubernatorial election in each of at least one-fifth (or 19) of the counties in the state).

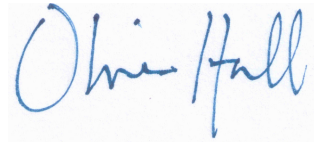
It appears that there are no cases upholding ballot access requirements that impose county-based signature requirements.

Although the Court did not request briefing on any other issues, Plaintiffs must take this opportunity to alert the Court to certain additional changes the legislation will impose. Plaintiffs have had less than 24 hours to review HB 342, and it has only come to their attention this afternoon that the proposed legislation will impose several new and extraordinarily severe burdens on them. Specifically:

1. HB 342 increases the signature requirements for “down-ballot” offices by 2.5 times;
2. HB 342 cuts the time allowed for minor political parties to circulate nomination papers in half, from 12 weeks to six weeks;
3. HB 342 delays the start time for minor political parties to circulate nomination papers until after the primary election, depriving them of what is by far the best opportunity to obtain valid signatures all year long – on primary election day; and finally,
4. HB 342 imposes a deadline for submitting nomination papers of the seventh Wednesday following the primary election, which would be June 8, 2016 – an almost certainly unconstitutionally early date. *See, e.g., Nader v. Brewer*, 531 F.3d 1028 (2008) (striking down deadline of June 9); *Nader 2000 Primary Election Comm., Inc. v. Hazeltine*, 110 F. Supp. 2d 1201 (D. S.D. 2000) (striking down deadline of June 20); *Fulani v. Lau*, Civil No. N 92535-ECR (D. Nev. Oct. 1, 1992) (striking down deadline of June 10); *Merritt v. Graves*, No. 87-4264 R (D. Kan. Sept. 20, 1988) (stipulated invalidation of June 10 deadline); *Sigler v. McAlpine*, No. 3AN-88-8695 (Ak. Super. Ct. 1988) (striking down deadline of June 1).

Plaintiffs object to these changes in the strongest possible terms. They were made without notice to Plaintiffs, as an entirely unnecessary addition to legislation that is intended to remedy Pennsylvania's currently unconstitutional statutory scheme. Yet the burdens they impose are so severe that Plaintiffs are strongly considering opposing HB 342, on the ground that it does more harm than good.

Respectfully submitted,

A handwritten signature in blue ink that reads "Oliver B. Hall". The signature is written in a cursive, flowing style.

Oliver B. Hall  
*Counsel to Plaintiffs*