

Testimony of James N. Clymer at Public Hearing
of The Senate State Government Committee

September 22, 2015

Testifying in support of Senate Bill 495

Almost any objective observer will agree the Pennsylvania's Election Code as now written places an undue burden on independent and minor party candidates. As I am sure everyone here is aware, the Honorable Lawrence F. Stengel, a Federal Judge for the Eastern District of Pennsylvania, recently concluded that the Election Code unconstitutionally infringes on the rights of the plaintiffs in a case brought by three minor parties or political bodies and various individuals involved in minor party or independent candidate efforts.

In his decision, Judge Stengel noted that "Freedom to associate for political ends has little practical value if the plaintiffs cannot place their candidates on the ballot and have an equal opportunity to win votes." He also noted that "With few exceptions over the last decade, the electorate has been forced to choose between Democratic and Republican candidates, alone, for statewide office."

Although Judge Stengel's decision was based on federal Constitutional law and the issue of Pennsylvania's Constitutional mandate that "[e]lections shall be free and equal" was not specifically before him, the equality of the election process through access to the ballot played heavily in his decision. His conclusion was that Pennsylvania's Election Code does not afford equality of access to the ballot, as it is applied.

The decision has been appealed by the Wolf administration and the final chapter may not yet have been written. However, with full disclosure of my bias in the case, inasmuch as I am one of the plaintiffs and have been a longtime leader in the Constitution Party and a minor party candidate for statewide office on three occasions, I believe the opinion was very well researched and supported by controlling authority and will likely be upheld. The fact is that, as of now Pennsylvania's Election Code has been determined to violate the U.S.

Constitution. Regardless of the final outcome of the litigation, the Election Code is in dire need of repair. The Voters Choice Act gives the General Assembly the opportunity to fix the problem now and render continuation of the litigation moot.

It is safe to say that every member of this Committee would prefer to be ascribed the term statesman as opposed to being labelled a politician. The reason is clear. Being a politician implies one makes decisions based on political expediency; on maneuvering for political advantage; of partisan self-interest. Statesmanship on the other hand implies acting on behalf of the people being represented in the body politic; of adhering to the rule of law and the principles of good government, notwithstanding the political winds of the day or the desires of self-preservation by party leaders. Statesmanship acknowledges that a vibrant marketplace of ideas is healthy for a free society as opposed to stifling dissenting opinions. It recognizes that allowing divergent opinions to be expressed in campaigns for office is a valuable and necessary ingredient in maintaining the democratic process. Senate Bill 495 represents the characteristics of statesmanship and I urge you to pass this bill out of committee.

Senate Bill 495 resolves the issues that resulted in Judge Stengel's ruling that the Election Code as it now stands does not pass Constitutional muster as applied to minor parties and independent candidates. Applied statesmanship will ask the question "What will uphold the Constitutions under which we operate, that we have a sworn duty to defend?" Clearly in this case, passing this bill will allow more people the opportunity to participate in the electoral process, will protect the associational rights of individuals and give greater opportunity to participate in the marketplace of ideas presented to the electoral public.

Good government asks what framework of managing ballot access, that both meets the government's legitimate interest and protects the rights of its citizens, can be accomplished in the most efficient and economic manner.

The amendments offered by Senate Bill 495 patterns the law dealing with minor parties by our neighboring state of Delaware. Its law offering similar provisions has been in effect since 1978 and has worked very well. It is a smooth

and efficient system that has saved the taxpayers of Delaware a lot of money and has had no negative effects such as ballot clutter that is frequently raised as an objection to easing ballot access. Because minor party ballot status is determined by the number of registered voters a party has, which is set at a reasonable and achievable (though not easy) threshold, the Secretary of State doesn't have to wade through tens of thousands of signatures to verify ballot access. And of course the chilling effect of challenges by private parties with the resulting tremendous burden, both financial and otherwise, that has kept minor parties off the ballot in the last decade, as discussed extensively in Judge Stengel's opinion, would be gone.

Pennsylvania officials already keep track of the number of registrations held by each party and political body so there would be no additional expense incurred in applying the new standard afforded by Senate Bill 495.

I also appeal to your virtue and character in asking that this Bill be passed by this Committee. Every member of this Committee has taken an oath to uphold the Constitution of the United States of America and the Constitution of Pennsylvania. The Declaration of Rights in Pennsylvania's Constitution unequivocally states in Section 5 that "Elections shall be free and equal". Although most would assert that the primary concern in that Constitutional mandate is equal access to the ballot box, i.e., that citizens not be indiscriminately denied the right to vote, as Judge Stengel correctly noted, "Ballot access regulations may impinge on voters' rights by 'limit[ing] the field of candidates from which voters might choose.'" He was quoting in part from a seminal ballot access decision rendered in 1983 by the U.S. Supreme Court in *Anderson v. Celebrezze*.

This illustrates the legal conclusion that limiting the choices on the ballot to one or two by denying reasonable access to the ballot by parties with dissenting views is tantamount to denying citizens the right to vote. Elections are not free and equal when access to the ballot is effectively limited to only two parties by the Election Code. Elections are not free and equal when the bar is so high to get on the ballot that an independent or minor party candidate must get ten to thirty

(or more) times the number of signatures that a member of a major party must get to have access to the ballot.

In virtually every other area of life, having multiple choices is viewed as a hallmark of a free society. It's in places like the former Soviet Union and other tyrannical societies where there is only one item to choose from – both in the ballot box and in the grocery store. In the free society which I trust is the desire of everyone here, we should aspire to a multiplicity of choices, allowing the same opportunity for choices in the ballot box as we do in the supermarket. We need to ensure that the citizens of this Commonwealth have the opportunity to consider among multiple viewpoints in the marketplace of ideas that constitute our elections. That is one of the distinguishing features of a free society. Rather than limiting their choices, we should trust the people with sound judgment in selecting their officials. The Voters Choice Act will take a big step toward election equality and accomplishing that objective.