



## MEMORANDUM

**TO:** Honorable Michael Folmer, Chair  
Senate Government Affairs Committee  
and all of the Honorable Members of the Committee

**DATE:** September 22, 2015

**RE:** Testimony regarding SB 495 PN 499 - the "Voter Choice Act"

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I would like to thank Chairman Folmer and the other members of the State Government Committee for this opportunity to comment upon SB 495 PN 499, otherwise known as the "Voter Choice Act." My testimony today is on behalf of the Republican Party of Pennsylvania of which I am the Chairman.

While we share the view of the Act's sponsors that we should all encourage a more democratic election process, reforms to achieve that objective must be more comprehensive, and not be limited just to ballot access for the candidates of current Minor Political Parties and Political Bodies. There is a pressing and important need to address serious issues relating to many of the voting systems used in the Commonwealth, many of which are over 10 years old and use technology that is outdated and does not take into account current technology. Since 2006 we have formally requested that the Secretary of State and the U.S. Attorneys in Pennsylvania investigate numerous reports that occur each year in both the Primaries and General Election regarding voting equipment failures and discrepancies. Neither the Department nor the U.S. Attorneys ever conducted such an investigation. Additionally, there is no verified paper audit trail system for any of the electronic voting systems used in the Commonwealth. VPAT would resolve the regular anomalies and potential errors that occur in voting results using electronic voting machines and give the public greater confidence in the outcome of our elections. Additionally, we have championed for years Photo Identification for voters in order to ensure the integrity of the voting process, a goal which benefits everyone, irrespective of political party affiliation or political ideology. Unfortunately, demagoguery has been advanced to avoid adopting such a critical safeguard. Thirty-two states have adopted Voter I.D., 17 of which require photo identification. Such a provision protects all of our voters, candidates, political parties, and political bodies.

Our nation's founders did not address political parties in our Constitution relying instead on a process that simply focused just on individual candidates seeking office. However, as our

history clearly shows, during John Adams' administration, the frustration of his Vice-President, Thomas Jefferson, who disagreed with President Adams' actions, caused him to form a political party: the Democratic-Republican Party, in order to set up a clear alternative to the incumbent. Since that time our political and electoral history has been with the existence of two active political parties. The Whigs replaced the Federalists, and the Republican Party was formed as a result of significant dissatisfaction with the Whigs. Since the 1856 Presidential Election, two parties have been the bulwark of our democratic system; the Republican Party and the Democratic Party. There have been instances of third parties contesting on a national scale. For example, we have had the Progressive Bull Moose Party of Theodore Roosevelt and the Socialist Party. These third parties have been a product of a time period of history and we are happy to discuss the political climate today and what we believe is a fair system for our elections.

America's political party system has adapted to James Madison's framework of government and we have had political stability with clear lines of responsibility for the party in the majority or party of the chief executive. We all know of the fractious nature of the multi-party parliamentary systems that often end up in brokered governments without clear direction and often result in fragile governments that can fall on a single issue, even one that may not be of significant import.

Our Election Code has always provided opportunities for candidates and voters who want to participate in the electoral process without having to be a part of either the Republican or Democratic Parties. The existence of numerous third party independent candidacies and the role of the Libertarian, Constitutional, and Green Parties are just a few examples of this. We support the existing provisions that permit this and have served the Commonwealth well since enacted. They do provide numerous alternatives for candidates and individuals to provide additional choices in our elections. However, they do not have to incur the substantial costs, efforts, and other mechanisms necessary to establish and maintain an on-going operating political party infrastructure. Both the Republican and Democratic Parties in Pennsylvania invest millions of dollars and count upon the support of thousands of individuals to maintain their viability and to provide the electorate with clear alternatives, issue information and advocacy, a reliable continuing existence, and a support system for everyone new to politics who wants to get involved.

The Act's introduction seeks a finding by the General Assembly that, *inter alia*, the "Commonwealth's election laws hinder the entry into the electoral process of independent candidates, thereby limiting the electoral choices available to voters of this Commonwealth." While we have not been shown any evidence or information to support such a broad claim, what is clear is that the Act contains serious flaws that will result in three distinct classes of political organizations in this Commonwealth that will actually result in greater limitations to electoral choices. The Act favors Minor Political Parties and Political Bodies and grants them distinct

advantages over the Republican and Democratic Parties, denying them equal protection under the United States and State Constitutions. Some of these serious flaws in the Act are:

1) Major political parties must file nomination petitions earlier than any other political option to gain access to the ballot and the major political parties must seek nomination petition signatures exclusively from their respective duly registered party members and the circulators must be registered members of the political party.

2) Minor Political Parties appear to be exempt from any nomination petition/paper requirements under the Act and instead the Act allows such parties to gain access to the ballot by just following their party rules, whatever they may be. This is a manifest defect of the Act and grants a favored status to the Minor Political Parties than that offered to either the Major Political Parties or Political Bodies.

3) Political bodies who will be given the right to circulate nomination papers with a reduced number of signatures, but they do not have to adhere to strict time lines for circulation that apply to Major Political Parties when circulating nomination petitions. The Political Bodies can continue to circulate nomination papers to any registered voter until August. The deadline for Major Political Parties is March for non-Presidential election years and February for Presidential election years.

So while the Voter Choice Act is ostensibly designed to provide third-party and independent candidates greater access to the general election ballot in Pennsylvania, we believe that it will have a negative impact on such access, create significant confusion, and impose requirements that are not equally applied to all in the Commonwealth in violation of the federal and state Constitutions.

Under the present construct of the Pennsylvania Election Code, organizations qualify as Minor Political Parties when a candidate obtains no less than two percent of the vote in at least ten counties *and* at least two percent of the “largest entire vote cast in the State for any elected candidate.”

The Voter Choice Act, however, proposes a far less onerous alternative to obtain minor party status than applies to Major Political Parties. The Act would confer party status upon any organization that – within 21 days of the Primary Election – has a minimum of 0.05% of statewide voters registered to the organization. In essence, an organization would need approximately 4,000 registered voters to meet the threshold of a Minor Political Party.

Furthermore, in another substantial relaxation of the law in favor of Minor Political Parties, but one not available to Major Political Parties, the Act eliminates the current requirement to circulate nomination papers to gain access to the general election ballot. Section

912.2(a) of the Voter Choice Act removes this requirement altogether. The proposed legislation states:

*Notwithstanding any other provision in this act to the contrary, minor political parties shall nominate all of their candidates for the offices to be filled at the ensuing November election pursuant to section 903 in accordance with the provisions of this act and the minor political party rules, and shall notify the Secretary of the Commonwealth in writing of the candidates at least eight weeks in advance of the municipal or general election.*

The Voter Choice Act, therefore, exclusively vests the nomination of candidates in the rules of the Minor Political Party. Such candidates would not need to circulate nomination petitions/papers or compete in a primary election; rather, they would be selected outright by the organization, which could be done just by the leadership of a Minor Political Party. This is an incomprehensible benefit and advantage.

In addition, Minor Political Parties have until eight weeks prior to the general election to supply the names of their candidates to the Secretary of the Commonwealth. This timeline is roughly one month after the current deadline for third-party candidates and significantly limits the opportunity to challenge potential candidates. This is yet another example of preferential treatment of Minor Political Parties that is not equally available to others.

There is nothing in the Act that states that Minor Political Party candidates are required to submit nomination papers. The amendment to the Election Code in the Act also deletes all references to nomination papers as it relates to minor political party candidates, as well the section governing filing fees.

Moreover, this Committee's staff reported to us that the amendment to Section 912.2(a) of the Election Code, applied only to substitute nominations. However, the language in the Act clearly governs "all of [the Minor Political Party] candidates for the offices to be filled at the ensuing November election..." There appears to be a discrepancy not only *when* minor political parties are required to submit their slate of candidates, but *how* they select candidates in the first place.

Prior to proceeding with this Act, we also ask that this Committee study and report on the proposal's effect on counties. For example, if the Libertarian Party qualifies as a minor political party state-wide, does their power to nominate candidates extend to the local level? While the intended spirit of the law may be to promote access to the statewide ballot only, clear language in the Act is needed to clarify the issue.

Another undefined issue that may cause future confusion is the impact of Minor Political Parties on the Pennsylvania voter registration form. The Act stipulates that "minor political

parties shall be subject to the provisions of this act applicable to political parties with respect to [...] voter registration forms [...] except as otherwise expressly provided in this section.” The proposal continues: “The Secretary of the Commonwealth shall prescribe forms or, if there is insufficient time, make appropriate conforming changes in existing forms to carry out the purposes of this section.”

What if the Libertarian Party qualifies as a Minor Political Party in 2016, but falls below the 0.05% threshold in 2017? Does the Secretary reserve the power to keep the Libertarian Party on the voter registration form despite not qualifying as a Minor Political Party? We do not believe that this is a strictly a regulatory matter, as the Committee has suggested, and that instead this should be addressed in this legislation. Furthermore, the history of proposing regulations by the Department of State is very weak and the likelihood of prompt action by the Department on this issue and then compliance with the Independent Regulatory Review Act could seriously delay clarification and inconsistent voter registration forms would continue to exist and cause confusion.

### ***Effect on Political Bodies***

The proposed legislation significantly alters Section 951(b) of the Election Code governing “nominations by political bodies.” Political Bodies are the traditional vehicle for “independent candidates.” Specifically, the legislation eliminates the need for independent candidates to obtain nomination paper signatures “equal to two per centum of the largest entire vote cast for any elected candidate in the State at large at the last preceding election at which State-wide candidates were voted for.”

The amendment to the Election Code contained in the Act would permit independent candidates to collect the same number of signatures as required of Republicans and Democrats for the same office. For example, a third-party independent candidate for Governor would need to submit 2,000 signatures with at least 100 from ten counties.

Additionally, the Act lacks clarity on two key elements concerning nomination papers:

- 1) The date on which nomination papers must be submitted. Would the reduced threshold require candidates to file during the same period as major party candidates? Or would they continue to file in August?
- 2) Whether the reduced signature level would lead to a revision of what constitutes a “qualified elector” for the purposes of signing a third-party nomination paper. May political bodies continue collecting signatures from *any* registered voter? Or must the signer be an unaffiliated voter?

Whether any voter (regardless of registration) would be eligible to sign a nomination paper is unclear and missing from the Act.

### ***Delaware Model***

We have been advised by the Committee that the principles contained in the Voter Choice Act have been modeled – in large measure – on similar legislation adopted in the State of Delaware. The rationale for certain items in the proposed legislation is not applicable because this is not Delaware.

For instance, one key tenet of the Act establishes voter registration as a criterion for qualifying as a Minor Political Party. The legislation sets “twenty-one days prior to the date of the primary election” as the deadline for achieving this threshold. However, Pennsylvania law sets thirty days prior to an election as the deadline for voter registration. The twenty-one day deadline was taken directly from the Delaware legislation. Thus, the Act contains conflicting voter registration dates.

Upon further review of the Act – and within the context of conflicting dates – more questions surface:

- Would organizations competing for Minor Political Party status have an extra nine days to obtain voter registrations?
- What happens if, after the primary election, county boards of election process enough registrations from the interim period to qualify a party?
- Does it retroactively receive the designation?
- If the Minor Political Party Rules dictate access to the ballot, are such candidate’s access papers not subject to challenge as is the case with Major Political Party and Political Body Candidates?
- Does the amount of votes a Minor Political Party receives no longer control its status, and instead is registration now the sole determinant?

In addition, the arbitrary threshold of registering “five one-hundredths of one per centum” of statewide voters is a slight variation on Delaware’s “ten one-hundredths of one per centum.” Why was this threshold chosen by the Act’s sponsors?

### ***Conclusion***

Since the proposed legislation is silent, vague, or conflicting on so many topics, a more comprehensive review by the Committee is needed to address the issues I have raised and that should be apparent to the Committee as well. This is too important of an issue to proceed with legislation that lacks sufficient clarity, contradicts existing provisions of the Election Code, and creates a system that denies equal protection to all participants in the electoral process, and that includes the Major Political Parties, Political Bodies, and the public. Further, as I said at the

beginning of my remarks, any effort to reform the electoral process should include moving on the reforms I listed, all of which have a substantial impact on the integrity of our process. The legislature owes that to the public.

Any reform in the mechanics of the elections should include the modernization of defending each person's right to vote fairly. This should not be a partisan issue but rather a basic right that all Pennsylvanians should vigorously defend. It is the integrity of our electoral system that defends our cherished right to vote. Legislative solutions for the following issues should be addressed with the following electoral packages:

- a. Photo Identification for all voters.
- b. Clearly defining nomination petition/paper signature requirements that have been rewritten in recent years by the courts.
- c. Obtain reports of election irregularities each year from complaints sent to county district attorneys for review. We have hundreds of irregularities reported to our party each cycle without significant follow up from law enforcement
- d. Increased civil and criminal penalties for fraud regarding nomination petitions, nomination papers, voter fraud, election tampering including Judges of Elections and interfering with election inspectors, etc.