

No. _____

**In the
Supreme Court of the United States**

RALPH NADER and PETER MIGUEL CAMEJO,
Petitioners,

v.

LINDA S. SERODY, RODERICK SWEETS,
RONALD BERGMAN, RICHARD TRINCLISTI,
TERRY TRINCLISTI, BERNIE COHEN-SCOTT,
DONALD BROAN and JULIA O'CONNELL
Respondents.

**On Petition for a Writ of Certiorari to the
Supreme Court of Pennsylvania**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Do the First and Fourteenth Amendments to the United States Constitution permit a state to penalize candidates who submit nomination papers for public office by ordering them to pay \$81,102.19 in litigation costs to political opponents who successfully sue to remove them from the ballot?

PARTIES TO PROCEEDING BELOW

Petitioners Ralph Nader and Peter Miguel Camejo were the named defendants and appellants below. Respondents Linda S. Serody, Roderick Sweets, Ronald Bergman, Richard Trinclisti, Terry Trinclisti, Bernie Cohen-Scott, Donald Broan and Julia O'Connell were plaintiffs and appellees below.

TABLE OF CONTENTS

QUESTION PRESENTED i

TABLE OF AUTHORITIES v

PETITION FOR A WRIT OF CERTIORARI 1

OPINIONS BELOW 2

JURISDICTION 2

CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED 2

STATEMENT OF CASE 3

A. Factual Background 3

B. Procedural History 4

REASONS FOR GRANTING THE WRIT 7

I. The Decision Below Presents an Important First
Amendment Question Concerning the Constitutional
Legitimacy of State-Imposed Penalties on Candidates
Who Submit Nomination Papers for Public Office,
with Significant Impact on Future State and Federal
Elections 7

II. The Decision Below Vests Trial Courts with
Unbounded Discretion to Penalize Candidates Who
Engage in Protected First Amendment Activity . . . 10

III. The Decision Below Conflicts with this Court’s
Precedents and Is Wrong on the Merits 13

IV. The Pennsylvania Supreme Court Failed to Conduct
the Independent Review of Facts that this Court
Consistently Requires Where Necessary to Determine
a Constitutional Question 15

CONCLUSION 18

APPENDIX

Pennsylvania Supreme Court Opinion
Affirming Assessment of Costs 1a

Pennsylvania Supreme Court Dissenting
Opinion 18a

Pennsylvania Supreme Court Concurring and
Dissenting Opinion 21a

Trial Court Opinion Setting Aside Petitioners’
Nomination Papers 23a

Pennsylvania Supreme Court’s *Per Curiam*
Order Affirming the Trial Court 39a

Pennsylvania Supreme Court Opinion
Dissenting from *Per Curiam* Order 41a

Trial Court Order Assessing Costs 60a

Trial Court Order Approving Bill of Costs . . . 62a

Statutes Involved 63a

TABLE OF CITED AUTHORITIES

CASES

<i>American Party of Texas v. White</i> , 415 U.S. 767 (1974)	12
<i>Anderson v. Celebreeze</i> , 460 U.S. 780 (1983)	8
<i>Bose Corp. v. Consumers Union of U.S., Inc.</i> , 466 U.S. 485 (1984)	15
<i>Bouie v. City of Columbia</i> , 378 U.S. 347 (1964)	12
<i>Bullock v. Carter</i> , 405 U.S. 134 (1972)	9, 13, 14, 15
<i>De Jonge v. State of Oregon</i> , 299 U.S. 353 (1937)	10, 12
<i>Feiner v. New York</i> , 340 U.S. 315 (1951)	15
<i>Hooven & Allison Co. v. Evatt</i> , 324 U.S. 652 (1945)	15
<i>Jenness v. Fortson</i> , 403 U.S. 431 (1971)	10, 12
<i>In re Nominating Petition of Esther M. Lee</i> , 578 A.2d 1277 (Pa. 1990)	11

<i>In re: Nomination Paper of Marakay Rogers,</i> No. 426 M.D. 2006 (Pa. Comm. Ct. 2006) . . .	8, 13
<i>Kern-Limerick, Inc. v. Scurlock,</i> 347 U.S. 110 (1954)	15
<i>Lakewood v. Plain Dealer Publishing Co.,</i> 486 U.S. 750 (1988)	8
<i>Lanzetta v. State of New Jersey,</i> 306 U.S. 451 (1939)	12
<i>Lubin v. Panish,</i> 415 U.S. 709 (1974)	9, 14, 15
<i>NAACP v. Alabama,</i> 357 U.S. 449 (1958)	12
<i>NAACP v. Button,</i> 371 U.S. 415 (1963)	8, 10, 13
<i>NAACP v. Claiborne Hardware Co.,</i> 458 U.S. 886 (1982)	14, 15
<i>Napue v. Illinois,</i> 360 U.S. 264 (1959)	15
<i>Niemotko v. Maryland,</i> 340 U.S. 268 (1951)	15
<i>New York Times v. Sullivan,</i> 376 U.S. 254 (1964)	15
<i>Norris v. Alabama,</i> 294 U.S. 587 (1935)	15

Ohio Valley Water Co. v. Borough of Ben Avon,
253 U.S. 287 (1920) 15

Storer v. Brown,
715 U.S. 724 (1974) 12

Sweezy v. New Hampshire,
354 U.S. 234 (1957) 9, 12

Thornhill v. State of Alabama,
310 U.S. 88 (1940) 10, 11

United States v. Harriss,
347 U.S. 612 (1954) 11

Watts v. Indiana,
338 U.S. 49 (1949) 15

STATUTES

25 P.S. § 2937 *passim*

25 P.S. § 3502.1 3, 11, 12

PETITION FOR A WRIT OF CERTIORARI

This case arises out of litigation the Democratic Party initiated against Petitioners Ralph Nader and Peter Miguel Camejo, who were independent candidates for President and Vice President, respectively, in the 2004 general election. The Party's goal was to deny voters the opportunity of voting for Petitioners by draining Petitioners' campaign of resources and forcing them from the race. Thus, between June and September of 2004, the Party filed twenty lawsuits to challenge Petitioners' nomination papers in seventeen states. Fifteen of those lawsuits were dismissed. The Party prevailed in Pennsylvania, however, having hired no fewer than nineteen attorneys to prosecute its claims. The trial court subsequently ordered Petitioners to pay \$81,102.19 in costs to Respondents, who were the named plaintiffs in the proceedings below. The Pennsylvania Supreme Court affirmed.

This petition seeks review of the Pennsylvania Supreme Court's decision, so that this Court may determine the important constitutional questions raised by the financial penalties that Pennsylvania imposes on candidates who submit nomination papers for public office. *Because this case arises in the context of a presidential election, these questions implicate a uniquely important national interest. Moreover, these questions assume a particular urgency because the same trial court that assessed costs against Petitioners in 2004 has assessed costs against another federal candidate in 2006. The bill submitted in that case totals \$89,668.16. Finally, Pennsylvania's penalties operate to freeze the political status quo, because they are aimed at minor party and independent candidates alone.* Intervention by this Court is therefore urgently needed to preserve the delicate balance of federal and state interests at stake in federal elections, and to protect the

rights of speech, assembly and to petition the government for redress of grievances in Pennsylvania and nationwide.

OPINIONS BELOW

The opinion of the Pennsylvania Supreme Court is published at 905 A.2d 450 (Pa. 2006), and is set forth in the appendix at 1a. The trial court order assessing costs against Petitioners is unpublished and is set forth in the appendix at 60a. The trial court order approving Respondents' Bill of Costs is unpublished and is set forth in the appendix at 62a.

JURISDICTION

The judgment of the Pennsylvania Supreme Court was entered on August 22, 2006. The Court has jurisdiction under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The Fourteenth Amendment to the United States Constitution states in relevant part: "No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The statutory provisions involved are Section 2937 and Section 3502.1 of the Pennsylvania Election Code, which are set forth in the appendix at 63a-64a.

STATEMENT OF CASE

A. Factual Background

Petitioners Ralph Nader and Peter Miguel Camejo were independent candidates for President and Vice President of the United States, respectively, in the 2004 general election. Respondents are eight Pennsylvania residents the Democratic Party enlisted to file a complaint challenging Petitioners' nomination papers and seeking their removal from Pennsylvania's ballot.

Democratic Party officials worried that Petitioners' candidacy would detract votes from their candidates, John Kerry and John Edwards, in the 2004 presidential election. Therefore, as part of its strategy to win that election, the Party launched a massive legal assault on Petitioners' campaign, which was intended to drain their resources and force them from the race. Between June and September of 2004, seventeen state Democratic Parties either sued or materially supported lawsuits filed against Petitioners. At least eighty-nine lawyers from forty-eight law firms nationwide helped prosecute these lawsuits. A Section 527 organization called The Ballot Project was established to coordinate their efforts. The goal, the organization's president told the *Washington Post*, was "to neutralize [Petitioners'] campaign by forcing [them] to spend money and resources defending these things."

Fifteen out of twenty lawsuits the Democratic Party initiated against Petitioners were dismissed. The Party

prevailed in Pennsylvania, however, having hired no fewer than nineteen attorneys to prosecute its claims. Now those attorneys seek to collect \$81,102.19 in costs from Petitioners, including \$42,835.19 for court reporter services and transcripts, and \$38,267.00 for handwriting experts.

B. Procedural History

On August 9, 2004, Respondents filed a complaint alleging numerous defects in Petitioners' nomination papers and seeking Petitioners' removal from Pennsylvania's ballot. Pennsylvania law required Petitioners to submit 25,697 valid signatures with their nomination papers. Petitioners submitted 51,273 signatures in total. To determine whether Petitioners submitted enough valid signatures, Judge James Gardner Colins and ten other judges assigned to the case held evidentiary hearings throughout the state. Based on these hearings, Judge Colins found only 18,818 signatures valid. Pet. App. 38a. Thus, on October 13, 2004, the trial court set aside Petitioners' nomination papers in an opinion that strongly rebuked Petitioners. "[T]his signature-gathering process was the most deceitful and fraudulent exercise ever perpetrated upon this Court," Judge Colins wrote, noting that the papers not only included names such as "Mickey Mouse," "Fred Flintstone," "John Kerry," and "Ralph Nader," but also, "thousands of names that were created at random and then randomly assigned either existent or non-existent addresses by the circulators." *Id.* at 37a.

However, as this petition demonstrates *infra* at Point IV, the facts in Judge Colins' own opinion flatly contradict his conclusion. Furthermore, Judge Colins never found Petitioners or anyone associated with their campaign responsible for wrongdoing. To the contrary, the record is uncontroverted that Petitioners voluntarily withdrew

thousands of signatures in an effort to lessen the trial court's burden. Nevertheless, on October 19, 2004, the Pennsylvania Supreme Court affirmed without opinion, issuing a *per curiam* order. *Id.* at 39a. Only Justice Saylor, who dissented, issued a written opinion. Justice Saylor specifically noted that the record did not support Judge Colins' conclusion on the issue of fraud. *Id.* at 57a n.13. Justice Saylor also found grounds for reversal in the trial court's erroneous invalidation of 8,976 signatures from qualified but unregistered voters. *Id.* at 59a.

The only notice Petitioners received of the financial risk they assumed by submitting nomination papers in Pennsylvania came in a status conference on August 11, 2004, when Judge Colins informed counsel that he would assess costs against the losing party. At that time, two days after Respondents filed their complaint, Petitioners had no reason to believe they would not prevail, nor could they have known the penalty that awaited if they did not. Nevertheless, when Judge Colins assessed this penalty, he treated it as an ordinary case of no fault cost-shifting, issuing his order assessing costs against Petitioners without opinion on October 14, 2004. *Id.* at 60a. Respondents submitted their bill totaling \$81,102.19 on December 3, 2004, and Judge Colins approved the bill, again without opinion, on January 14, 2005. *Id.* at 62a.

On appeal to the Pennsylvania Supreme Court, Petitioners argued that the penalty assessed against them burdened their rights of political association, political speech and due process, as well as the right of voters to cast their votes effectively, in violation of the First and Fourteenth Amendments to the United States Constitution. Pet. Brief 15-16. Petitioners specifically argued that the penalty threatened candidates with "personal financial ruin and bankruptcy," subject only to the trial court's discretion. *Id.* at 17. Thus,

Petitioners argued, the proceedings below violated their “fundamental due process rights.” *Id.* Finally, Petitioners argued that the trial court’s order was an abuse of discretion and unauthorized by Pennsylvania law. *Id.* at 14, 18.

On August 22, 2006, a divided Pennsylvania Supreme Court affirmed, holding that Section 2937 of the Pennsylvania Election Code permits the trial court to order candidates to pay costs “in its discretion,” and that the trial court did not abuse its discretion in ordering Petitioners to pay Respondents \$81,102.19. Pet. App. 16a-17a. Like the trial court, the majority treated the penalty assessed against Petitioners primarily as an ordinary case of no fault cost-shifting. Thus, the majority devoted its analysis to statutory construction, and did not address Justice Saylor’s finding that the record did not support Judge Colins’ ruling on fraud. In fact, the majority made no independent analysis of the record whatsoever, relying instead on Judge Colins’ conclusion that fraud was pervasive, and that Petitioners were responsible for it. The majority summarily dismissed Petitioners’ constitutional objections, finding “no evidence” that the penalty assessed against them burdened their rights of political association and political speech. *Id.* at 15a. In any case, the majority concluded, the burden would be “rationally related” to the state’s interest in ensuring honest and fair elections. *Id.* The majority entirely failed to address the burden imposed on Petitioners’ due process rights and the burden imposed on voters’ First Amendment rights. Justice Saylor and Justice Eakin dissented, finding that Section 2937 did not authorize the court to assess costs against candidates. *Id.* at 18a, 21a. Justice Eakin concurred in part, finding authorization for \$42,835.19 in costs under a previously uncited provision of the court’s Internal Operating Procedures. *Id.* at 21a-22a.

On October 11, 2006, the trial court entered a *per curiam* order denying Petitioners' motion for a stay pending disposition by this Court of their petition for a writ of certiorari. On October 31, 2006, Respondents' counsel sent Petitioners' counsel a letter demanding payment by November 3, 2006 of \$89,821.23, representing the penalty assessed in the decision below "plus statutory interest".

REASONS FOR GRANTING THE WRIT

I. The Decision Below Presents an Important First Amendment Question Concerning the Constitutional Legitimacy of State-Imposed Penalties on Candidates Who Submit Nomination Papers for Public Office, with Significant Impact on Future State and Federal Elections.

The question presented is whether the Constitution permits Pennsylvania to order candidates who submit nomination papers for public office to pay \$81,102.19 in costs to political opponents who successfully sue to remove the candidates from the ballot. The issue raised, however, is not whether Pennsylvania has the authority to enact reasonable ballot access restrictions, but whether Pennsylvania may penalize candidates who try but fail to comply with the restrictions it enacts, absent a finding of wrongdoing by the candidates. The Court has never addressed that question directly. Review is therefore warranted because the decision below impacts a uniquely important national interest, with significant consequences for future state and federal elections.

In holding that Section 2937 of the Pennsylvania Election Code permits the state to impose a financial penalty on candidates who commit no wrong, but only try to comply with state election laws, the Pennsylvania Supreme Court

subjects future candidates in Pennsylvania to the risk of incurring severe financial penalties, limited only by a trial court's discretion, if they do not voluntarily withdraw their nomination papers when challenged. In fact, the same trial court that assessed \$81,102.19 in costs against Petitioners has already relied on the decision below to assess costs against a federal candidate in the 2006 election cycle. The bill submitted in that case, which is pending approval by the trial court, totals \$89,668.16. *In re: Nomination Paper of Marakay Rogers*, No. 426 M.D. 2006 (Pa. Comm. Ct. 2006). The punitive nature of these costs cannot fail to intimidate those who might otherwise run for office. This Court's intervention is therefore urgently needed to protect the rights of speech, assembly and to petition the government for redress of grievances from the chilling effect the decision below causes in Pennsylvania. *Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750, 757 (1988); *NAACP v. Button*, 371 U.S. 415, 433 (1963).

The impact of the decision below is not confined to Pennsylvania's electoral system alone. As the Court has noted, "in a Presidential election a State's enforcement of more stringent ballot access requirements...has an impact beyond its own borders." *Anderson v. Celebreeze*, 460 U.S. 780, 795 (1983). This is because a presidential candidate's failure to achieve ballot access in one state undermines the candidate's ability to compete in other states. Moreover, Pennsylvania, with its twenty-one Electoral College votes and battleground state status, is among the most important states in the nationwide presidential election. Candidates who fail to achieve ballot access in Pennsylvania therefore suffer a substantial setback in the nationwide election and, further, are stigmatized by their failure to compete in an important state. The penalties Pennsylvania imposes on presidential candidates thus "implicate a uniquely important national interest." *Id.* at

794-95. Certiorari is warranted so that the Court may address the impact that the decision below has on this uniquely important national interest.

Furthermore, denying review will only exacerbate the immediate harm the decision below causes by inviting uncertainty into long-standing and well-settled principles of constitutional law. *See Lubin v. Panish*, 415 U.S. 709 (1974) (striking down candidate filing fees where the state failed to provide a non-monetary alternative); *Bullock v. Carter*, 405 U.S. 134 (1972) (same). For if the Constitution permits Pennsylvania to impose financial penalties on candidates who submit nomination papers but commit no wrong, then the Constitution permits other states to do the same. Without this Court's intervention, candidates nationwide will face uncertainty as to the personal financial harm to which they subject themselves by submitting nomination papers in *any* state. Presidential candidates in particular will face millions of dollars in potential penalties in the very next election cycle. The chilling effect the decision below causes thus will be felt nationwide. Moreover, it will be felt most keenly by minor party and independent candidates, who already struggle with limited resources to comply with state laws requiring them to submit tens of thousands of signatures to achieve ballot access. As this Court has recognized, minor party and independent candidates play a vital role in our political system, having introduced innumerable political programs the major parties eventually adopted, such as the abolition of slavery, women's suffrage, the graduated income tax, social security and many others. *Sweezy v. New Hampshire*, 354 U.S. 234, 251 (1957). The absence of such candidates from the nation's political system "would be a symptom of grave illness in our society." *Id.* Yet such is the inevitable consequence of a state regulation that "operate[s] to freeze the

political status quo” by penalizing these candidates for trying to participate in elections. *Jenness v. Fortson*, 403 U.S. 431, 438 (1971). This intolerable result requires the Court’s intervention.

II. The Decision Below Vests Trial Courts with Unbounded Discretion to Penalize Candidates Who Engage in Protected First Amendment Activity.

The uncertainty the decision below introduces into the federal electoral system is aggravated by the Pennsylvania Supreme Court’s novel construction of Section 2937, which vests the trial court with unbounded discretion to penalize candidates who submit nomination papers. Pet. App. 63a. “The legislature has determined that the court, in its discretion when it deems it just, can impose costs,” the majority held. *Id.* at 16a. So construed, the statute makes no distinction between a candidate’s legitimate exercise of First Amendment freedoms and conduct that is properly subject to sanctions. *De Jonge v. State of Oregon*, 299 U.S. 353, 364-65 (1937). Indeed, as Justice Saylor noted in dissent, the record contains no finding of wrongdoing by Petitioners. Pet. App. 57a n.13. Moreover, the majority entirely failed to address the view of both dissenting Justices that Section 2937 does not authorize costs against candidates under any circumstances. *Id.* at 18a, 21a. Nevertheless, the majority’s construction is authoritative, and transforms Section 2937 into “a penal statute susceptible of sweeping and improper application.” *Button*, 371 U.S. at 433. The provision does not “aim specifically at evils within the allowable area of State control,” but authorizes sanctions against protected and unprotected activity alike. *Thornhill v. State of Alabama*, 310 U.S. 88, 98 (1940).

Section 2937 not only chills the legitimate exercise of First Amendment freedoms with the constant and pervasive threat of sanction, but also lends itself to harsh and discriminatory enforcement. *Id.* Prior to this case, Pennsylvania had never before in any reported decision assessed costs against a candidate under Section 2937. In fact, the decision below is virtually devoid of authority to support the assessment. In the only case on which the court below relied, costs assessed against a candidate were actually *reversed*, although the court noted in dicta that it had authority to allow them. *In re Nominating Petition of Esther M. Lee*, 578 A.2d 1277, 1279 (Pa. 1990). Moreover, the assessment of \$81,102.19 in costs exceeds the express statutory limit set forth in the Pennsylvania Election Code by more than 800 percent. *See* 25 P.S. 3502.1 (authorizing the court to assess costs against any candidate “who knowingly makes a false statement regarding his eligibility or qualifications...in an amount up to ten thousand (\$10,000) dollars”); Pet. App. 64a. The assessment of costs in the decision below thus penalizes Petitioners without notice for engaging in conduct that ordinarily constitutes an exercise of First Amendment freedoms. *Thornhill*, 310 U.S. at 97-98.

As this Court has long recognized, fundamental principles of due process require a state to provide “fair notice” that conduct may be subject to criminal sanctions or civil penalties. *United States v. Harriss*, 347 U.S. 612, 617 (1954). In the decision below, the court justified the unprecedented penalty assessed against Petitioners by reference to the fraud it attributed to them. Pet. App. 16a. However, the court did not invoke Section 3502.1, the statute that authorizes penalties for such conduct – no doubt because the record contains no finding that Petitioners engaged in that conduct. Pet. App. 64a. Instead, the court invoked Section 2937 to authorize a penalty that grossly exceeds the express

limit set forth in Section 3502.1. *Id.* “It is the statute,” however, “not the accusation under it, that prescribes the rule to govern conduct and warns against transgression.” *Lanzetta v. State of New Jersey*, 306 U.S. 451, 453 (1939). By invoking Section 2937 to penalize Petitioners without any evidence of wrongdoing by them, the court violated the most basic principles of due process. *See Thompson v. Louisville*, 362 U.S. 199 (1960) (reversing conviction where record was devoid of evidence that the convicted committed a crime). The court compounded this error by its “unforeseeable judicial enlargement” of Section 2937, which, “applied retroactively, operates precisely like an ex post facto law.” *Bowie v. City of Columbia*, 378 U.S. 347, 353 (1964). Just as the Constitution prohibits a state legislature from passing such a law, so too “a State Supreme Court is barred by the Due Process Clause from achieving precisely the same result by judicial construction.” *Id.*, at 353-54 (reversing conviction based on a novel statutory construction retroactively applied).

Ballot access laws that impose disparate requirements on minor party and independent candidates routinely survive scrutiny by this Court. *See American Party of Texas v. White*, 415 U.S. 767 (1974); *Storer v. Brown*, 715 U.S. 724 (1974); *Jenness*, 403 U.S. 431. The decision below goes one fatal step further, however, in holding that a state may penalize minor party and independent candidates who attempt to comply with those requirements. This was constitutional error. The First Amendment rights of speech, assembly and to petition the government for redress of grievances are equally guaranteed to all, including minor parties and dissident groups. *See NAACP v. Alabama*, 357 U.S. 449, 460 (1958); *Sweezy*, 354 U.S. 234; *De Jonge*, 299 U.S. 353. Moreover, when Petitioners submitted their nomination papers, they were engaged in an effort to achieve legitimate political ends through lawful means, which is quintessentially

protected activity. *See Button*, 371 U.S. at 434. This Court has consistently held that only a regulation narrowly drawn to serve a compelling state interest can justify limiting such freedoms. *Id.* at 438. The assessment of costs in the decision below is not narrowly drawn, nor does it serve any legitimate state interest. Given the immediate and severe impact the Pennsylvania Supreme Court's error will have on the nation's electoral system, this Court cannot safely allow the error to pass. This is particularly true because the same trial court has already repeated the error by penalizing another federal candidate in 2006. See *In re: Nomination Paper of Marakay Rogers*, No. 426 M.D. 2006 (Pa. Comm. Ct. 2006). The bill submitted in that case, totaling \$89,668.16, is pending approval. Intervention by this Court is therefore urgently needed to correct these egregious errors and prevent their repetition.

III. The Decision Below Conflicts with this Court's Precedents and Is Wrong on the Merits.

Certiorari is also warranted because the decision below is wrong on the merits. It held that a trial court can impose costs on candidates whose political opponents bring proceedings to remove them from the ballot. Pet. App. 17a. That holding is contrary to this Court's precedent prohibiting states from requiring "candidates to shoulder the costs of conducting...elections." *Bullock*, 405 U.S. at 149. As this Court explained in *Bullock*, the costs of holding an election arise due to a state's legislative choice, not due to a candidate's decision to run. *Id.* at 148. Since candidates have no alternative but to comply with the state's legislative choice, the Court refused to require candidates to "pay that share of the cost that they have occasioned" by trying to comply with the state's choice. *Id.*

In *Bullock*, the Court stated that filing fees must be “closely scrutinized” and found “reasonably necessary” to accomplish “legitimate state objectives” in order to pass constitutional muster. *Id.* at 144. The Court therefore struck down the filing fees at issue because, while they furthered the legitimate objective of relieving a burden on the state’s treasury, they are not “necessary” to achieve that objective. *Id.* at 145. In the decision below, by contrast, the costs that the court assessed do not relieve a burden on the state’s treasury. Rather, these costs reimburse private citizens for expenditures they allegedly made in proceedings they brought to remove political opponents from the ballot. The Court has never held that states have a legitimate interest in reimbursing citizens under these circumstances. To the contrary, the Court has determined that states “may not award compensation for the consequences of nonviolent, protected activity.” *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 918 (1982) (denying recovery in tort for consequences of political boycott).

Even assuming that states have a legitimate interest in reimbursing private citizens under the facts of this case, the Pennsylvania Supreme Court nevertheless applied the wrong legal standard. The court upheld Section 2937 because it found the statute “rationally related” to the state’s interest in ensuring honest and fair elections. Pet. App. 15a. The decision below thus squarely conflicts with the heightened standard of review this Court uniformly applies in First Amendment cases generally, and which it specifically adopted in *Bullock* and subsequently reaffirmed. *Bullock*, 405 U.S. at 144; *Lubin*, 415 U.S. at 709. Moreover, the court below completely ignored the effect of its decision on voters’ rights. Yet the unequal impact on voters’ rights was this Court’s primary rationale for adopting heightened review in *Bullock* and *Lubin*. *Bullock*, 405 U.S. at 143-144; *Lubin*, 415 U.S.

at 713. The costs assessed below, like those in *Bullock*, are “so patently exclusionary as to violate traditional equal protection concepts.” *Lubin*, 415 U.S. at 715 n.4. Thus, certiorari is also warranted so that this Court may review the effect of the decision below on voters’ rights in light of *Bullock* and *Lubin*.

IV. The Pennsylvania Supreme Court Failed to Conduct the Independent Review of Facts that this Court Consistently Requires Where Necessary to Determine a Constitutional Question.

This Court’s consistent practice of requiring an independent evaluation of facts necessary to determine a constitutional question compels the granting of this petition. *See Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 498-501 (1984); *NAACP v. Claiborne*, 458 U.S. 886, 921-32 (1982); *New York Times v. Sullivan*, 376 U.S. 254, 285 (1964); *Napue v. Illinois*, 360 U.S. 264, 272 (1959); *Kern-Limerick, Inc. v. Scurlock*, 347 U.S. 110, 122 (1954); *Niemotko v. Maryland*, 340 U.S. 268, 271 (1951); *Feiner v. New York*, 340 U.S. 315, 316 (1951); *Watts v. Indiana*, 338 U.S. 49, 50-51 (1949); *Hooven & Allison Co. v. Evatt*, 324 U.S. 652, 659 (1945); *Norris v. Alabama*, 294 U.S. 587, 589-90 (1935); *Ohio Valley Water Co. v. Borough of Ben Avon*, 253 U.S. 287, 289 (1920). Indeed, this case provides striking confirmation of the wisdom of the Court’s long-standing practice. For the decision below, which raises constitutional questions of the utmost importance, relies on a factual conclusion that the Pennsylvania Supreme Court failed to evaluate, and which, as the dissent demonstrates, the record flatly contradicts.

As an initial matter, the idea that Petitioners attempted to gain ballot access as candidates for the highest office in the

nation by submitting thousands of obviously fictitious or fraudulent names like Mickey Mouse, Fred Flintstone, Ralph Nader and John Kerry, strains credulity. As Petitioners have maintained, they, like the court, were victims of a well-organized and well-publicized effort to sabotage their campaign. Pet. Brief 10-11. Moreover, despite Judge Colins' serious accusations, he made no finding that Petitioners or anyone in their campaign were responsible for wrongdoing, nor did he provide any basis whatsoever for penalizing them. Pet. App. 62a. Nevertheless, in affirming that penalty, the Pennsylvania Supreme Court explicitly relied on Judge Colins' finding of fraud. *Id.* at 16a-17a. The court did so even though, as Justice Saylor noted in dissent, the facts in Judge Colins' own opinion conclusively refute that finding. *Id.* at 57a n.13.

Specifically, the trial court found only 687 of 51,273 total signatures (or 1.3 percent) to be "forgeries". *Id.* Judge Colins counted 568 of these himself, while the other ten judges combined counted fewer than 100. *Id.* at 34a, 36a. Thus, Judge Colins counted forgeries at a rate (5.25 percent) more than 20 times that of the other ten judges (0.25 percent) and accounted for 85 percent of the total. Moreover, the eleven trial court judges invalidated the vast majority of signatures not based on fraud, but on technical grounds. *Id.* at 35a-36a. For example, almost 9,000 signatures were invalidated because otherwise qualified electors were not registered on the day they signed the petition. *Id.* at 35a. Almost 8,000 signatures were invalidated because information like dates and addresses were "written in [the] hand of another." *Id.* at 36a. More than 6,000 signatures were invalidated because the signor's current address did not match that on the voter registration list. *Id.* at 35a-36a. Finally, almost 2,000 signatures were invalidated due to missing information. *Id.* at 36a. Despite invalidating more than

25,000 signatures on narrow technical grounds, the trial court still found almost 19,000 signatures valid. *Id.* Thus, the undisputed record flatly contradicts Judge Colins' finding of widespread fraud. Moreover, as Justice Saylor noted, to the limited extent that the record reflects fraud, Judge Colins did not find that Petitioners – rather than their opponents – were responsible. *Id.* at 57a n.13. To the contrary, the record is uncontroverted that Petitioners voluntarily withdrew thousands of signatures in an effort to mitigate the consequences of their opponents' sabotage.

The disparate treatment of Petitioners' constitutional claims by the majority and the dissent in the decision below arises directly from their disagreement as to whether the court was required to make an independent evaluation of the facts. The majority accepted the trial court's finding of fraud without examination, and therefore rejected Petitioners' constitutional claims. The dissent rejected the trial court's finding of fraud, and therefore found it unnecessary to reach Petitioners' constitutional claims, concluding that the penalty assessed against them was unauthorized. Pursuant to the principle stated in the cases above, Petitioners respectfully request this Court to grant certiorari, so that the Court may determine for itself what the facts in the record disclose, and whether Section 2937 unconstitutionally burdens their rights of speech, assembly, to petition the government for redress of grievances, and to due process of law. Moreover, granting certiorari will enable the Court to address the impact of Section 2937 on voters' rights, which the decision below entirely ignores.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

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