Ralph Nader
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June 21, 2011

Chief Justice Ronald D. Castille
Pennsylvania Supreme Court
1818 Market Street
Philadelphia, PA 19103

Dear Chief Justice Castille,

This open letter is prompted by your recent opinion in *In Re Farnese*, which repeats the demonstrable falsehood that the Nader-Camejo 2004 petition drive involved "extensive fraud and deception," yet fails to acknowledge that the challenge to our petitions – filed by several partners in your former law firm, Reed Smith, LLP – was a product of the criminal conspiracy at the heart of former Pennsylvania Attorney General Tom Corbett's subsequent "Bonusgate" prosecution. *See In Re Farnese*, No. 13 EAP 2008, 21 (Pa. March 29, 2011) (Slip Opinion enclosed). Such distortion of the facts, if not deliberate, is inexplicable. It is now a matter of public record that state employees working for the Pennsylvania House Democratic Caucus illegally prepared Reed Smith's challenge to the Nader-Camejo nomination petitions at taxpayer expense. Further, according to sworn testimony in the Bonusgate proceedings – which remains undisputed – Reed Smith partner Efrem Grail coordinated the state employees' effort. Yet in *Farnese*, you maintain that the unprecedented award of $81,102.19 in costs to our challengers was justified by the "extreme circumstances" in our case – ironically, a reference not to the criminality associated with the challenge effort, nor to the evidence and testimony identifying Efrem Grail and Reed Smith by name, but to the unfounded accusations about our petition drive. Slip Op. at 21.

Farnese purports to clarify the circumstances under which lower courts may impose costs in petition challenges, but in fact your opinion establishes no standard at all. Instead, *Farnese* holds – contrary to the statutory text and legislative intent of 25 P.S. § 2937 ("Section 2937") – that a court may impose costs against any candidate "as it shall deem just," subject only to "the discretion of the judicial officer." Slip Op. at 19. *Farnese* thus reaffirms the dangerous precedent set in our case, when the Pennsylvania Supreme Court first invoked Section 2937 to assess costs against candidates who defend nomination petitions that they are required by law to submit. Chief Justice Castille, the Jim Crow era ended in large part because the United States Supreme Court struck down such financial burdens in a series of landmark civil rights cases protecting candidate and voter rights. You acknowledge those cases in *Farnese* but choose to disregard them, Slip Op. at 16, 24, and proceed to enter an opinion that threatens candidates with financial ruin if they defend their right to run for public office. This is not just bad law; *Farnese* is a direct threat to the "free and equal" elections guaranteed by Article I, Section 5 of the Pennsylvania Constitution.

The purpose of this open letter is to correct the public record regarding the falsehoods in *Farnese*, which would be defamatory were it not for the doctrine of judicial immunity. In

addition, Pennsylvania voters must decide whether to retain you in 2013, and they should be informed about the havoc that the "least dangerous" branch (THE FEDERALIST No. 78 (Alexander Hamilton)), under your stewardship, is wreaking upon their democratic form of government by denying voters their free choice of candidates. Finally, we still hold out hope that you will bring your views into conformity with the facts and law, by joining your esteemed colleague, Justice Thomas Saylor, in rejecting both *Farnese* and the discredited decisions in our case.

To begin, *Farnese* states that the Pennsylvania Supreme Court "addressed the merits of the challenge to the [Nader-Camejo] nomination petitions" when it affirmed former Commonwealth Court Judge James Gardner Colins' decision setting them aside. *Farnese* Slip Op. at 11 n.9 (citing *In Re Nomination Paper of Nader ("Nader II")*, 860 A.2d 1 (Pa. 2004) (affirming *In re: Nomination Paper of Nader ("Nader I")*, 865 A.2d 8 (Pa. Commw. 2004)). That is incorrect. In fact, the Court never addressed the merits of Judge Colins' decision, but affirmed without opinion. *See Nader II*, 860 A.2d 1. Only Justice Saylor entered an opinion addressing the merits, and he dissented on the ground that Judge Colins had improperly invalidated thousands of our petition signatures, *see id.* at 2-8 (Saylor, J. dissenting), and that Judge Colins had therefore erred by removing our candidacy from the ballot. *See id.* at 10. Further, Justice Saylor concluded, the record contains "no evidence" to support Judge Colins' contrivance regarding the supposed "fraud" in our petitions. *Id.* at 8 n.13.

To confirm Justice Saylor's analysis – which is also undisputed – one need look no further than the record itself, because the record unambiguously demonstrates that, while Judge Colins invalidated more than 30,000 of the 51,273 signatures on the Nader-Camejo nomination petitions, he did so <u>not</u> based on any finding of "fraud," but rather based on contested, questionable and highly technical grounds. *See Nader I*, 865 A.2d at 18 (consolidating findings of ten reviewing judges). Specifically:

- 8,976 signatures were struck because qualified electors were not registered to vote on the day they signed the petition, even though Pennsylvania law imposes no such requirement (based on this error alone, Justice Saylor concluded that the Nader-Camejo ticket should have remained on the ballot, *see Nader II*, 860 A.2d at 2 (Saylor, J. dissenting));

- 7,851 signatures were struck because omitted data like incomplete dates or addresses was filled in after electors signed the petition – for example, if a "2004" or a "PA" or a zip code was deemed not to match the elector's handwriting, the signature was struck even though there was no dispute that the signature itself was valid (the Nader-Camejo ticket also would have remained on the ballot if these valid signatures had not been stricken);

- 6,411 signatures were struck because the elector's current address did not match the elector's registered address – *i.e.*, because electors had moved;

- 3,513 signatures were struck because of unspecified "other" defects;

- 1,869 signatures were struck because information like dates or addresses was incomplete – again, even though there was no dispute that the signature itself was valid;

- 1,855 signatures were struck because of unspecified "affidavit problems";

- and 206 signatures were struck because signatures were illegible, printed or included initials.

See Nader I, 865 A.2d at 18. Thus, a total of 30,681 signatures were struck on the foregoing technical grounds, even though tens of thousands of them were undisputedly signed by living, breathing, qualified Pennsylvania electors. *See id*. Another 1,087 signatures were designated as duplicates. *See id.* Finally, 18,818 signatures were found to be valid. *See id.* The findings in Judge Colins' own opinion therefore demonstrate that 50,586 out of 51,273 total signatures on our nomination petitions were either valid, or struck based on dubious technicalities that are virtually impossible to avoid in a petition drive. *See id.*

Nonetheless, after summarizing the findings in our case, Judge Colins wrote that he was "compelled to emphasize" that our signature-gathering effort had been "the most deceitful and fraudulent exercise ever perpetrated upon this Court." *Id*. at 18-19. Presumably, Judge Colins was referring to the remaining 687 signatures on our petitions, which unknown parties signed using bogus names, and which the Court designated as "forgeries" after they escaped detection by our petition circulators. *See id.* at 18. But our circulators, working under tremendous time pressure, had caught and removed thousands of those signatures before submitting the petitions, and as Justice Saylor emphasized, the small number that they missed amounted to only 1.3 percent of the 51,273 total. *See Nader II*, 860 A.2d at 8 n.13 (Saylor, J. dissenting). Further, not only is there "no evidence" to support Judge Colins' assertion that these bogus signatures resulted from "fraud" by anyone associated with our campaign, *see id.*, but also, as we have always maintained, they were obviously the work of pranksters or saboteurs. This conclusion is bolstered by the Bonusgate Grand Jury's finding that the criminal effort to remove our candidacy from the ballot "began before [our] petitions were even filed."[1]

Judge Colins may have exaggerated the number and percentage of so-called "forgeries" in our petitions because he personally designated 568 of the 687 signatures in that category, whereas the other ten reviewing judges combined designated a total of only 119. *See Nader I,* 865 A.2d at 12-13, 17-18; *see also* Mark Brown, *Politics in Pennsylvania, Stifling Open Ballots*, JURIST LEGAL NEWS & RESEARCH (August 24, 2006), available at http://jurist.org/forum/2006/08/politics-in-pennsylvania-stifling.php (reporting that Judge Colins only claimed to have found evidence of "fraud" after his first failed attempt to set aside our petitions on other grounds was rejected). Regardless, the record confirms that Judge Colins' own

[1] *See* 28th Statewide Investigating Grand Jury Presentment (hereinafter, "Presentment"), 55, *available at* http://www.attorneygeneral.gov/uploadedFiles/Press/Harrisburg-Bonus-GJ-Presentment.pdf (last visited May 20, 2011).

findings contradict his otherwise libelous dicta regarding the supposed "fraud" in the Nader-Camejo petitions. *See id*. at 18. Even your former law firm admitted as much when, following our objection, Reed Smith immediately deleted from its website the false claim that "30,000 signatures" on our petitions "were forged or otherwise fraudulent." Yet this is the discredited canard that you inexplicably perpetuate in *Farnese*, without addressing the facts in the record, without addressing Justice Saylor's unassailable dissent debunking Judge Colins' bombastic rhetoric, and without acknowledging that then-Attorney General (and now Governor) Corbett's Bonusgate prosecution subsequently revealed a massive criminal conspiracy to remove our candidacy from the ballot. *Compare* Slip Op. at 21 *with Nader II*, 860 A.2d at 8 n.13 (Saylor, J. dissenting) *and* Presentment at 54-58.

As you know, before the Bonusgate investigation revealed that taxpayer funds had been illegally used to finance Reed Smith's challenge to our petitions, a sharply divided Pennsylvania Supreme Court affirmed Judge Colins' order directing us to pay $81,102.19 in costs to our challengers. *See In Re Nomination Paper of Nader ("Nader III")*, 905 A.2d 450 (Pa. 2006). This was the first time in history that the Court had invoked Pennsylvania's petition challenge statute to impose costs against defending candidates, *see id.* at 457 & n.5, and yet, once again, the majority simply ignored Justice Saylor's dissent, which demonstrated by close textual analysis that Section 2937 only authorizes such costs against challengers. *See id.* at 461 (Saylor, J. dissenting).[2] The majority's twisted reading thus transformed Section 2937 into a punitive statute, sweeping in scope, that threatens any candidates who defend their nomination petitions with potentially bankrupting costs. In practice, of course, Section 2937 poses a far greater threat to minor party and independent candidates, because only they must submit tens of thousands of signatures under Pennsylvania's discriminatory and excessively burdensome ballot access laws.

So construed, Section 2937 is undoubtedly unconstitutional. As the Supreme Court of the United States observed more than 40 years ago, in striking down Virginia's poll tax, "It has long been established that a State may not impose a penalty upon those who exercise a right guaranteed by the Constitution." *Harman v. Forsennius*, 380 U.S. 528, 540 (1965). The Supreme Court and the lower federal courts have thus struck down not only poll taxes, but also mandatory filing fees, per-signature verification fees and other state-imposed costs on candidates and voters.[3] Yet in *Farnese*, you reaffirm that courts may order candidates to pay costs of $80,000 or more if they defend their nomination petitions when challenged under Section 2937, and further, you specify that courts need not even make any finding of "fraud" or "bad faith" to justify such a draconian penalty. Slip Op. at 22. That makes Pennsylvania unique in the entire nation: no other state threatens to penalize its citizens simply because they seek to run for public office. The resultant damage to Pennsylvania's democracy is as severe as it was predictable – in the 2010

[2]The legislative history also supports Justice Saylor's statutory construction. *See*, *e.g.*, S. 3rd Cons. Cal. 58 (Pa. 1985) (statement of Sen. Williams) (Section 2937 should not be drafted so as to "have a chilling effect on the average person who may want in this democracy to run for office"); *see also* S. Supp. Cal. No. 1, 1483 (Pa. 1998) (statement of Sen. Kukovich) ("Do you remember how embarrassed we all were when [a bill] passed at the last minute last year…[would have] made it virtually impossible for a third party candidate to gather enough names on a petition to place her or his name on the ballot?").

elections for statewide office, voters were denied any choice but to vote for major party candidates. *See* Oliver Hall, *Some Political Parties Remain Outlaws in Pa.*, PHILADELPHIA INQUIRER (Oct. 18, 2010) (reporting that every minor party or independent candidate for statewide office in Pennsylvania withdrew due to the threat of incurring costs under Section 2937).

The opacity of the proceedings in our case make it difficult to know exactly how or why the Pennsylvania courts arrived at this perilous juncture. What is clear is that the courts violated their own rules of civil procedure in upholding the $81,102.19 in costs assessed against us, by denying us any opportunity to take discovery regarding the criminality of the challenge effort, or even to have a hearing, in violation of our express rights. Pa. R.C.P. 206.7(c); Pa. R.C.P. 211. Instead, in an unpublished decision entered in 2008, the Commonwealth Court held as a matter of law that our challengers "did not act improperly or illegally in asserting the challenge" – despite the fact that the Attorney General was actively pursing felony charges against those who orchestrated the challenge effort. *See In Re Nomination Paper of Ralph Nader*, No. 568 M.D. 2004, 7-8 (Dec. 4, 2008), *recon. denied*, No. 568 MD 2004 (Dec. 31, 2008). In so ruling, the Court simply ignored the undisputed testimony delivered under oath in the Bonusgate proceedings that Efrem Grail – the Reed Smith partner who requested the $81,102.19 in costs – coordinated the state employees' effort to prepare the challenge, that on several occasions he personally accepted the state employees' work-product at Reed Smith's Pittsburgh offices, and that he "definitely knew" that the individual with whom he met was employed by former Rep. Mike Veon, who is now in jail, convicted of multiple felonies in the Bonusgate scandal. *See id.* Once again, the Pennsylvania Supreme Court affirmed without opinion. *See In Re Nomination Paper of Ralph Nader*, No. 94 MAP 2008 (Oct. 23, 2009).

The result, as reflected in *Farnese*, is a complete inversion of reality. Our candidacy has been smeared with unsupported and demonstrably false allegations of "fraud," while our challengers, represented by your former law firm, are rewarded with $81,102.19 in costs for litigation which, they do not deny, relied upon work-product that was prepared illegally using taxpayer funds and resources. Further, Efrem Grail has publicly admitted that the costs are payable not to the nominal challengers whom he and his Reed Smith partners purported to represent, but to Reed Smith itself.[4] *See* Thomas Fitzgerald, *Pa. Law Firm Duns Nader for Expenses*, PHILADELPHIA INQUIRER (July 14, 2007) ("'I just want my firm's money,' said Efrem Grail, the Reed Smith partner in charge of the case").

[3] *See*, *e.g.*, *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966) (holding poll tax unconstitutional); *Bullock v. Carter*, 405 U.S. 134 (1972) (holding non-trivial candidate filing fees unconstitutional); *Lubin v. Panish*, 415 U.S. 709 (1974) (holding candidate filing fees unconstitutional in absence of non-monetary alternatives); *Belitskus v. Pizzingrilli*, 343 F.3d 632 (3rd Cir. 2003) (enjoining enforcement of Pennsylvania's filing fees against candidates unable to pay them); *Republican Party of Arkansas v. Faulkner County*, 49 F.3d 1289 (8th Cir. 1995) (holding that Arkansas cannot require political parties to hold and pay for primary elections); *Fulani v. Krivanek*, 973 F.2d 1539 (11th Cir. 1992) (declaring unduly burdensome signature verification fees unconstitutional); *Dixon v. Maryland State Bd. of Elections*, 878 F.2d 776 (4th Cir. 1989) (declaring mandatory filing fee of $150 for non-indigent write-in candidates unconstitutional); *McLaughlin v. North Carolina Board of Elections*, 850 F. Supp. 373 (M.D. N.C. 1994) (holding five-cent per signature verification fee unconstitutional); *Clean-Up '84 v. Heinrich*, 590 F. Supp. 928 (M.D. Fl. 1984) (holding ten-cent per signature verification fee unconstitutional).

Sadly, ours is just one in a pattern of cases in which the appearance of impropriety has drawn national attention singling out the Pennsylvania Supreme Court – and you in particular – for pointed criticism. *See*, *e.g.*, Editorial, *Untenable Judicial Ethics*, NEW YORK TIMES (Nov. 27, 2010) (criticizing Chief Justice Castille for accepting "gifts of dinners, event tickets, golf outings and plane rides...some from people with cases decided by his court," and concluding, "Pennsylvania's Supreme Court needs to change its ethics rules"); Editorial, *What's the Deal, Castille?*, PHILADELPHIA INQUIRER (Nov. 24, 2010) ("Chief Justice Ronald D. Castille has set a poor example that no other Pennsylvania judge should follow with his frequent acceptance of...gifts from lawyers and businessmen"); Editorial, *Castille Must Resign*, PHILADELPHIA INQUIRER (June 20, 2010) ("serious conflict of interest issues" and a "perception of collusion" regarding Chief Justice Castille's handling of Family Court building contract "undermine trust in the chief justice's impartiality surrounding legal matters" and "disqualif[y] him to lead the court during this dark period").

Such criticism is all too familiar, given the undisclosed conflicts of interest that we discovered after our own case was decided, including your former employment by Reed Smith, and the managing partner's offer, memorialized in a March 15, 1991 press release, that you could contact Reed Smith if you were "interested in a position with the firm at any time in the future." In addition, while our case was pending, Reed Smith began representing your predecessor, former Chief Justice Ralph Cappy, as his defense counsel in a state ethics investigation, and also gave thousands of dollars in campaign contributions to former Justice Sandra Schultz Newman, who authored the opinion affirming the award of $81,102.19 requested by Reed Smith. In total, Reed Smith, its attorneys and its co-counsel gave at least $67,900 in past and present campaign contributions to five out of six justices who voted to award costs in Reed Smith's favor. (Reed Smith appears not to have given Justice Saylor, author of the two unrebutted dissents in our case, any campaign contributions.) None of these facts were disclosed while our case was pending.

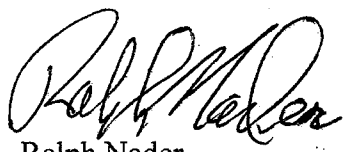
Chief Justice Castille, it is never too late to vacate the judgment in a wrongly decided case. *See Estate of Gasbarini v. Medical Center of Beaver City, Inc.*, 409 A.2d 343, 345 (Pa. 1979) ("Where equity demands, the power of the court to open and set aside its judgments may extend well beyond the term in which the judgment was entered"). That is what the Pennsylvania Supreme Court should do in our case, and in the case in which the Court upheld another $80,000-plus assessment of costs against 2006 Green Party senatorial candidate Carl Romanelli. *See In re Rogers*, 959 A.2d 903 (Pa. 2008). To the extent that *Farnese* reaffirms those decisions, it too should be vacated. You will find the rationale for such action set forth in Justice Saylor's two learned dissents cited herein, his opinion in *Farnese* (concurring in the result only, which

[4]Neither Efrem Grail nor any other Reed Smith attorney was charged with a crime for any role they may have played in the Bonusgate matter. Instead, then-Attorney General Corbett permitted Reed Smith to remain anonymous in the Presentment, referenced only as a "law firm" involved in the challenge effort. Despite Corbett's pledge not to accept campaign contributions from parties his office was investigating in connection with Bonusgate, in August 2008 – not six weeks after filing the Presentment – he accepted at least $15,900 in campaign contributions from Reed Smith and its attorneys, including some who litigated the challenge to our petitions. Corbett accepted at least $43,500 more in contributions from Reed Smith and its attorneys to his gubernatorial campaign in 2010.

vacated an award of costs), and in those federal court decisions striking down poll taxes and the other unconstitutional fees and costs long since repudiated in every state except Pennsylvania. *See supra* n.3.

Should you decide to stand for reelection in 2013 – that is, if you do not resign before then – voters no doubt will take a keen interest in your response to the matters raised in this letter. *See generally* PENNSYLVANIA CODE OF JUDICIAL CONDUCT Canon 1 ("Judges should uphold the integrity and independence of the judiciary); Canon 2 ("Judges should avoid impropriety and the appearance of impropriety in all their activities); Canon 3 ("Judges should perform the duties of their office impartially and diligently"). In particular, voters may inquire about your relationship with your former law firm, and whether Reed Smith received preferential treatment in our case as a result thereof. We therefore look forward to any response that may be forthcoming. Thank you for your attention to this matter.

Sincerely,



Ralph Nader

cc: Citizens of Pennsylvania
Justices of the Supreme Court of Pennsylvania
Judges of the Commonwealth Court of Pennsylvania