

Veto No. 1997-1

SB 200

June 25, 1997

To the Honorable, the Senate of the Commonwealth
of Pennsylvania:

I am returning herewith, without my approval, Senate Bill 200, Printer's No.1172, entitled "An act amending the act of June 3, 1937 (P.L.1333, No.320), entitled 'An act concerning elections, including general, municipal, special and primary elections, the nomination of candidates, primary and election expenses and election contests; creating and defining membership of county boards of elections; imposing duties upon the Secretary of the Commonwealth, courts, county boards of elections, county commissioners; imposing penalties for violation of the act, and codifying, revising, and consolidating the laws relating thereto; and repealing certain acts and parts of acts relating to elections,' further providing for compensation of election officers, for court establishment of new election districts, for polling place layouts, for special elections for members of the General Assembly, for affidavits of candidates, for objections to nomination filings, for affidavits of candidates for nomination, for nominations by minor political parties, for nominations by political bodies, for contents of nomination papers and campaign finances, for nomination filing time and place, for objections to nomination petitions, for objections to substituted nomination certificates, for ballot number and samples, for late contributions and independent expenditures, for unlawful possession and counterfeiting of ballots, for forged and destroyed ballots, for tampering with voting machines, for illegal voting, for denial of voting, for election officer fraud, for election interference, for violence at polls, for unlawful voting, for improper party voting, for repeat voting, for removal of ballots, for election bribery and for absentee violations."

This bill amends the Pennsylvania Election Code to increase the salaries of election officers; to increase the permissible size of election districts; to establish a deadline for scheduling a special election for the General Assembly; to make certain changes with regard to voting compartments and voting machines and with respect to the printing of ballots; to increase the number of signatures required and to make other changes relating to nomination papers for minor political parties and independent political bodies; and to increase penalties for Election Code violations.

Many of the provisions contained in the bill are worthwhile. For example, the increase in pay for local election officers would make it less difficult for county boards of elections to recruit and retain workers to operate polling places on election day. The greater flexibility which would be added in establishing election districts, in equipping polling places with election machinery and in the printing of ballots are reforms which have been sought by both the county election boards and the Department of State.

I also welcome the provision of the bill which would require the prompt scheduling of special elections for vacant seats in the General Assembly, as well as the provisions which substantially enhance the criminal penalties prescribed for willful violations of the Election Code.

Although the bill contains these worthwhile reforms, I object to certain provisions

of the bill which would excessively increase the burdens placed upon minor political parties and independent political bodies in nominating candidates for statewide public office. I also object to the bill's failure, in its establishment of signature requirements for minor party and independent candidates, to distinguish between offices which are elected individually and those in which multiple officials (with a number sometimes varying from year to year) are elected to the same office in the same election.

The Election Code currently establishes a formula for determining the number of signatures which must be obtained on a nomination paper for a candidate of a minor political party to appear on the November ballot in an election for public office. For statewide candidates, the required number of signatures is two percent of the largest vote cast for any officer elected at the last statewide election in the Commonwealth. For officers elected other than statewide, the same two percent requirement would apply to the largest vote cast for an officer elected at the last election in the same geographic area or district. The number of signatures may not, however, be less than the number of signatures required for the nomination petition of a party candidate for the same office.

This bill in most cases would greatly increase the number of signatures required on nomination papers of minor political parties and political bodies by applying the two percent signature requirement to a larger vote total. For statewide candidates, the requirement would be applied to the entire vote cast for all candidates for the same office at the last election for that office. For all other candidates, the requirement would be applied to the entire vote cast for the office at the last election for the same office other than a special election.

In part, this amendment addresses one of the issues raised in *Patriot Party v. Mitchell*, 826 F.Supp. 926 (E.D. Pa.), *aff'd*, 9 F.3d 1540 (3d Cir. 1993). In *Patriot Party*, the court held that the existing two percent rule is unconstitutional as applied to a minor party candidate for a statewide judicial office. Because the candidate was required to obtain two percent of the largest vote for a candidate at the preceding general election, he was required to obtain substantially more signatures than the minor party candidates for President, Governor and United States Senator. The signature requirements for those offices were based upon the vote totals of statewide judicial candidates in the preceding municipal election when the voter turnout and statewide vote is much lower than in a general election. The court held that the statute, as applied to the minor party and its candidate for Supreme Court justice, violates equal protection. As a remedy, the court directed the Secretary of the Commonwealth in that case to apply the two percent rule to the highest vote-getter in the last judicial election.

While the bill effectively addresses this constitutionally impermissible statutory scheme with regard to statewide judicial candidates, the change would also require candidates of minor political parties and political bodies for other statewide offices to obtain a significantly greater number of signatures than now required.

I agree that it is necessary and appropriate for the General Assembly to strike a proper balance between establishing reasonable rules regulating ballot access for minor parties and independent candidates who want to run for public office and requiring those minor parties and independent candidates to demonstrate a minimal level of support from the electorate before Pennsylvanians are asked to take time to scrutinize a candidacy. By requiring a minimal but significant showing of public support as a condition of according upon a party or candidate the privilege of a place on the ballot,

the Commonwealth can best assure that the voters will be able to choose among only serious and viable candidates for public office. The exclusion from the ballot of frivolous candidates will also help to assure that the winner of the general election will receive a majority of the votes cast or, at least, a strong plurality of the votes. These are substantial interests which the Commonwealth is constitutionally entitled to further and protect. See *Patriot Party v. Mitchell*.

However, I believe that the changes made by the bill, though probably constitutionally permissible, do not strike the proper balance. Therefore, I must disapprove this bill.

The amendment would also create a problem where there are typically multiple vacancies for the same office, such as elections for judge, county commissioner or county council, and school board. The bill would require signatures equaling two percent of the entire vote cast for the office in the preceding election. Therefore, the number of signatures required by a minor party or independent candidate for school board, for instance, would be calculated by adding the total vote at the last election for all vacant directorships. This provision does not seem to take account of the fact that each school district elector may cast multiple votes in the election for the office.

The bill would also create a potential for inconsistency for minor party and independent candidates seeking the same office in different election years. For example, if the bill were in effect today, a candidate for common pleas court judge in Philadelphia County would have to obtain 46,148 nomination paper signatures to access the ballot, based on the total votes cast in 1995 for 11 vacancies on the court. If the bill had been in effect in 1995, the candidate would have been required to obtain only 18,453 signatures, based on the total votes cast for only six vacancies filled in the 1993 election.

Clearly, there are areas in the Election Code which are in need of reform and clarification. The General Assembly attempted to address many of these areas in the bill. However, the effects created by several of the provisions described above would create excessive new burdens on minor party and independent candidates. For these reasons, I hereby disapprove this bill and return it to the General Assembly without my signature.

THOMAS J. RIDGE