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

Veto No. 1997-2

HB 502 June 25, 1997

To the Honorable, the House of Representatives
of the Commonwealth of Pennsylvania:

I am returning herewith, without my approval, House Bill 502, Printer's No.2071, entitled "An act amending the act of May 22, 1933 (P.L.853, No.155), entitled 'An act relating to taxation; designating the subjects, property and persons subject to and exempt from taxation for all local purposes; providing for and regulating the assessment and valuation of persons, property and subjects of taxation for county purposes, and for the use of those municipal and quasi-municipal corporations which levy their taxes on county assessments and valuations; amending, revising and consolidating the law relating thereto; and repealing existing laws,' further providing for the valuation of property in counties of the second class A and third class and for auxiliary boards of assessment appeals; and providing for refunding of certain unconstitutionally collected personal property tax."

This bill amends the General County Assessment Law of 1982 to limit the rate at which a county can increase its property taxes following a county-wide reassessment. The county is only permitted to levy taxes in the first year following reassessment so that total revenues from the new tax equal the same amount of revenues as in the preceding year. In order to raise taxes in the first year following reassessment, the county must do so by a second specific vote to increase revenue by not more than 5% over the preceding year. The bill also creates auxiliary boards of assessment appeals in fourth through eighth class counties to hear reassessment cases.

This bill also provides that if a tax imposed under the Intangible Personal Property Tax Law is held to be unconstitutional, counties shall only be responsible for a refund of taxes levied and assessed in 1996 or thereafter.

Except for the provisions limiting the right of taxpayers to refunds, the bill offers protections to taxpayers who experience a significant increase in property taxes following a county-wide reassessment. I would approve a bill which contained only these protections, but I cannot do so because the unconstitutional limits on tax refund procedures violate due process.

This bill amends Pennsylvania's tax refund procedures as they impact intangible personal property taxes. These amendments violate due process because they abridge the "clear and certain remedy" that Pennsylvania taxpayers currently possess and which they possessed at the time their intangible personal property taxes were paid.

Under existing law, Pennsylvanians who wish to challenge the constitutional validity of a tax must pay the tax first (to avoid penalties for untimely filings), subsequently obtain judicial review of the tax and thereafter seek a refund of any taxes found to be unconstitutional. The United States Supreme Court has held that a state, such as Pennsylvania, which operates under such a system must provide its taxpayers with "meaningful post-payment relief" for taxes paid pursuant to any tax scheme ultimately found to be unconstitutional, *McKesson v. Division of Alcohol Beverages and Tobacco*, 496 U.S. 18 (1990). More specifically, a state must provide taxpayers with not only a fair opportunity to challenge the accuracy and legal validity of their tax obligations but also a "clear and certain remedy" for any erroneous or unlawful tax

collection to ensure that the opportunity to contest the tax is a meaningful one, *Id.* at 39 (quoting *Atchison, T. & S.F.R. Co. v. O'Connor*, 223 U.S. 280 (1912)).

Pennsylvania currently provides a "clear and certain remedy" through its refund statute, 72 P.S. section 5566b(a), which provides as follows:

> (a) Whenever any person or corporation of this Commonwealth has paid or caused to be paid, or hereafter pays or causes to be paid, into the treasury of any political subdivision, directly or indirectly, voluntarily or under protest, any taxes of any sort, license fees, penalties, fines or any other moneys to which the political subdivision is not legally entitled; then, in such cases, the proper authorities of the political subdivision, upon the filing with them of a written and verified claim for the refund of the payment, are hereby directed to make, out of budget appropriations of public funds, refund of such taxes, license fees, penalties, fines or other moneys to which the political subdivision is not legally entitled. Refunds of said moneys shall not be made, unless a written claim therefor is filed, with the political subdivision involved, within three years of payment thereof.

Consequently, with respect to all intangible personal property taxes which have been paid to date, Pennsylvania taxpayers had a right to expect, at the time such taxes were paid, that they had a right to such a refund within three years of the payment of such taxes.

House Bill 502 seeks to abridge that right. Most importantly, House Bill 502 mandates that no refunds may be sought except with respect to taxes levied and assessed in 1996 and thereafter. If House Bill 502 is signed and if the personal property tax is declared unconstitutional tomorrow, taxpayers who otherwise would have been able to recoup wrongfully paid taxes dating back to June of 1994 will be foreclosed from recovering taxes except for tax years 1996 and 1997. This provision alone renders House Bill 502 unconstitutional.

As the United States Supreme Court has stated, "... what a state may not do ... is to reconfigure its scheme, unfairly, in mid-course - to 'bait and switch,' as some have described it. Specifically, ... [the State] held out what plainly appeared to be a 'clear and certain' post-deprivation remedy, in the form of its tax refund statute, and then declared, only after [the taxpayer] and others had paid the disputed taxes, that no such remedy exists," *Reich v. Collins*, 130 L.Ed.2d 454, 459 (1994).

In addition to the United States Supreme Court precedent cited above, the Pennsylvania Supreme Court has held that a statutory provision which took away the right to a refund was "manifestly invalid as it impermissibly attempted to 'extinguish a cause of action which had already accrued to a claimant,'" *First National Bank of Fredericksburg v. Commonwealth*, 520 Pa. 244 (1989).

Unfortunately, this bill stands as an absolute bar against recovering any monies for tax years preceding 1996. As such, it changes the rules in "mid-course" and eliminates the post-deprivation remedy with respect to earlier tax years in its entirety. This is constitutionally impermissible.

I therefore withhold my signature from House Bill 502.

THOMAS J. RIDGE