

Colorado

It doesn't take much to get on the ballot in Colorado: just \$500 and three forms. But against my better judgment, and in deference to my caution with respect to unknown Reform Party politics, we agreed to the Reform Party's request to run on its line in Colorado in 2004. This was a mistake. Mainly mine. On September 13, 2004, not one but *two* complaints were filed against the secretary of state of Colorado for putting Nader/Camejo on the ballot. The first challenge—by a lawyer named Mark G. Grueskin at Isaacson, Rosenbaum, Woods & Levy, P.C., in Denver—was filed by plaintiff Nancy Pakeiser, a registered Democrat, and Maurice O. Nyquist, a registered unaffiliated voter, against Republican Colorado secretary of state Donetta Davidson. Isaacson, Rosenbaum, Woods & Levy were paid by the 527 Ballot Project, Inc., for their expenses. The first complaint had a kitchen sink approach, claiming that:

- Certification of Nader and Camejo on the Colorado ballot on September 8, 2004, violated the law because a Colorado statute provides that a minor party's certificate of designation of its candidates needs to claim that the candidates are members of the party, while neither Nader nor Camejo were members of the Reform Party. (COLO. REV. STAT. § 1-4-1304(3).)
- The certificate had to be notarized to be effective and that Ralph and Peter's certification was only "acknowledged" by a notary in Texas, not in Colorado.

- A form filed was deficient because it didn't state a date of the assembly at which the candidates were designated.
- The secretary of state failed to require the Reform Party to submit a required resolution.
- A minor party under Colorado law needs to provide public notice of any nominating assembly no later than fifteen days before the meeting in a newspaper of general circulation in each county wherein the members of the minor political party reside. (COLO. REV. STAT. § 1-4-1301(1)(h).)

The complaint asked for a hearing on the next day. The Democrats took advantage of how much mischief can be made when a determined party wants to exploit ambiguities or unanswered confusion in the minutiae of a state's ballot access laws. The Colorado Democratic Party and three eligible electors, Democrat Valentin Vigil and unaffiliated voters Gary Fedel and Susan Fedel, represented by David R. Fine of Kelly, Haglund, Garnsey & Kahn LLC and Michael J. Belo of Berenbaum, Weinshienk & Eason, P.C., filed a *second* complaint against the secretary of state on September 13, alleging much of the same as the other complaint but adding that the state convention violated the Reform Party's own bylaws because it was not held in the second quarter of the year and throwing in more about the distressed condition of the Reform Party in Colorado.

A few days later, Chris Gates, the chairman of the Colorado Democratic Party, would tell the *Colorado Statesman* that "Ralph Nader's appearance on the Colorado election ballot was not achieved in compliance with Colorado

election law. . . . The Democratic Party welcomes any candidate to the ballot as long as they play by the rules. . . . It is only fair that we expect Ralph Nader to abide by the same laws as the other candidates on the ballot." (See Scott Bershof, "Dems to Nader: Not This Year, Buddy," *Colorado Statesman*.) But to the *Rocky Mountain News*, Gates was a bit more straightforward, saying "I'm chair of the party, and I'm bringing a lawsuit. . . . We're not being coy about this at all. There's nothing stealthy about this. People feel the votes were manipulated in 2000, and Democratic voters are resolute that this not happen again." (See John Aguilar, "Nader-Come-Latelies?" *Rocky Mountain News*, Sept. 15, 2004.)

Since few people read the court filings, they will never know the degree to which the Democrats descended into desperate nonsense. How many people in Colorado understood we were being sued for whether the notarization was in Texas or Colorado? What Coloradoans believed could well depend on which paper they read.

An editorial titled "Moves Against Nader Limit Ballot Choice" in the *Rocky Mountain News* noted that "Ralph Nader probably won't get our vote. But we're wondering if some Democrats haven't gone overboard in taking his ballot status to the Courts." The paper noted that the second suit filed Monday by "Ballot Project Inc., formed by Democrats for the sole purpose of throwing up roadblocks to Nader's candidacy, shows the ferocity with which the candidate is being pursued and harassed from state to state. Committed to squandering Nader's resources and diverting his campaign's energy, Ballot

Project is helping local Democrats in more than 20 states, including Colorado, find pro bono lawyers to challenge Nader's efforts to get on state ballots. This might not be remarkable if it weren't for some of the bizarre challenges to Nader's ballot access. In Nevada, for example, Democrats contested 11,571 out of 11,888 signature petitions, more than twice the number needed to nominate a candidate for that state's presidential ballot. A judge threw out the suit. In Oregon, a Nader nominating convention was hijacked by Democrats who flooded the convention and then refused to sign the candidate's petitions." (Editorial, "Moves Against Nader Limit Ballot Choice, Democrats Mount Aggressive Campaign," *Rocky Mountain News*, Sept. 15, 2004.)

The *Denver Post*, on the other hand, editorialized: "It's too bad it's come to this, but Nader has brought it upon himself. In his pathetic search for a place on the ballot, he is trying to don the mantle of a party that he forgot to join." It then said that "Nader has turned into a political spoiler whose motives will always be questioned. The two big political parties – the one that's propping him up and the one that's tearing him down – should leave well enough alone. We want to say ignore him and maybe he'll go away, but everyone knows that won't happen." (Editorial, "Nader Has Right to Run, But Must Play by Rules," *Denver Post*, Sept. 15, 2004.)

The secretary of state of Colorado noted that "substantial compliance with the provision or intent of this code shall be all that is required for the proper conduct of an election to which this code provides." (Secretary's Brief

in Opposition to Plaintiffs' Petition and Motion Seeking Forthwith Relief, at 6 [citing § 1-1-103 (1) & (3), C.R.S. (2003)].) Importantly, the secretary of state noted that Colorado law could not be construed to override a national political party's own rules for selecting its candidates for president and vice president. (*Id.* at 8, citing *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 224 (1986) ("The Party's determination of the boundaries of its own association, and of the structure which best allows it to pursue its political goals, is protected by the Constitution.").) If the National Reform Party imposed no requirement for affiliation or membership, the state was certainly not going to. This was our argument precisely to many of the states that had affiliation or nonaffiliation requirements for the vice president especially. State ballot access laws are not supposed to be used to tell people who they can politically associate with under the First Amendment. Our counsel noted that the Democratic Party was seeking a "cramped, restrictive reading of the Colorado Election code" and that these "last-minute complaints in violation of Colorado law" put Nader at a disadvantage and would affect fundamental rights, noting that in 2000 more than "90,000 Colorado residents voted for Nader." (Intervenor-Defendants' Combined Motion to Dismiss and Brief in Opposition, at 4-6.) Our counsel also pointed out that, *at the urging of the Colorado Democratic Party*, the very same Denver district court in 1988 struck down state laws that conflicted with internal party regulations. (*Id.* at 8 [citing *Colorado Democratic Party v. Meyer*, No. 88CV7646, tr. at 6-7 (Denver District Court, May 2, 1988) (transcript of ruling from bench)],

attached to our motion as Exhibit A.) He also pointed out that it is not the Reform Party's fault if they ask the secretary of state which form to submit to identify their electors, submit the one form they are told to submit, and confirm that they have submitted the correct one, only to find out that this was not a proper certificate of designation for presidential electors.

The judge, the Honorable John N. McMullen, ruled orally in the consolidated cases that we were on the ballot because state law doesn't concern itself with party membership for presidential candidates, that we had substantially complied with the law because it doesn't tell parties how to choose their presidential electors. Moreover, the Reform Party used the same form the Republican Party used. Another crisis averted: we won both suits and were on the ballot in Colorado.