

Hawaii

You can understand why some people refer to Hawaii as a “tropical Tammany.” For forty years it has been all Democrat, all the time. (*See John Fund, Stealing Elections: How Voter Fraud Threatens Our Democracy* [San Francisco: Encounter Books, 2004], 95.) Getting on the ballot there would not be easy. Hawaii has the lowest percentage of registered voters in the country—less than 50 percent of the eligible voters are registered. You have to talk to twice as many people to find a registered voter. Ralph was the only candidate to visit there in both 2000 and 2004, and he got nearly 6 percent of the vote in 2000.

We held a contest in Wyoming and Idaho and said that whoever got the most signatures in each state (neither easy) would be flown to Hawaii to collect there for one week. We were very determined to get on the ballot there in 2004, as we believed in a fifty-state election. Unfortunately, we had a number of problems just trying to get the petitions from the Democratic-controlled secretary of state’s office in Hawaii. They rationed them, giving out only a few at a time.

As an independent candidate in 2004, Ralph was required to submit 3,711 valid signatures, or 1 percent of the votes cast in Hawaii at the last presidential election, to get on the ballot. (*See HAW. REV. STAT. § 11-113 (c)(2)(B).*) In Hawaii, a *new party* needs only 677 signatures or one-tenth of 1 percent of the number of registered voters. An independent candidate for statewide office only needs 25 signatures. (*See Richard Winger, “An Analysis of the 2004 Nader Ballot Access,”* 579 [text accompanying nn. 111–114, citing HAW. REV. STAT. §§ 1-62 and 12-3].) The state said we turned in 7,184 signatures on the petitions by the deadline but that we were 39 signatures short. This did not make sense to me. We had sent our best and most seasoned petitioners there—the

ones who could find 300 signatures a day in Wyoming. How could we have an almost 50 percent “invalidity rate”?

Four days later the Office of Elections changed its story and said we had turned in 5,873 signatures, and now we were 587 signatures short. We asked for a recount, and the state agreed it would recount the invalidated signatures in the presence of a Nader representative, and we would not then redo a recount in court. In the meantime, though, Hawaii was sending out more than 1 million absentee and overseas ballots without Ralph and Peter’s names on them!

During the recount, the problem became clear. It turns out that Hawaii’s petition asked signers for their Social Security number and birth date. The former is optional, but the latter is not. If the petition signer fails to include his or her birth date, the signature is not counted. (*See HAW. REV. STAT § 11-62(a)(3).*)

We filed cases in state and federal court. The state court ruled against us initially, and our appeal sat in the Hawaii Supreme Court until early 2008. (The Hawaii court made errors about its own laws and ignored relevant precedents. *See Winger, “An Analysis of the 2004 Nader Ballot Access,”* 580–81. The court also had *Younger* concerns and wasn’t sure this case should even be in federal court while a state proceeding was pending, even though we raised multiple constitutional claims. Slip op. *Nader et al. v. Yoshina*, CV No. 04-00611 (D. Haw. Oct. 13, 2004) at 13.

In October 2004 we went to federal district court and filed *Nader v. Yoshina*, along with Michael Peroutka and his vice-presidential candidate David W. Porter of the Constitution Party, as they were also running as independents in Hawaii, to challenge the constitutional defects with the process. In 2008, the federal court finally told the Hawaii

Supreme Court that was sitting on our case that it would issue a ruling if the high court did not by June 1. We would not have a chance to put on a trial in Hawaii until March 2008. Ultimately, the Hawaii Supreme Court defended the state's process of half checking voter eligibility to sign the petition and said that it was just fine for the state to sit in judgment on appeal of its own process. It was renamed *Nader v. Cronin*, No. 04-0611 (D. Haw. Feb. 7, 2008) (order granting in part and denying in part defendant's motion for summary judgment; and denying plaintiff's cross-motion for summary judgment). At publication of *Grand Illusion*, this case was pending in the Ninth Circuit appellate court. (*Peroutka, et al. v. Cronin, Nader, et al. v. Cronin*, Civ. No. 04-0611 (D. Haw. May 1, 2008), appeal filed May 30, 2008.