Michigan

The state of Michigan required at least 30,000 valid signatures be turned in 110 days before the election. (MICH. COMP. LAWS. § 168.590c (2).) At first we weren't sure exactly how many were required, as conflicting statutory provisions concerning the signature requirement caused a 1,776-signature discrepancy. As Mike Richardson emailed to me: "The Bureau of Elections has interpreted the conflict in favor of the lower signature standard. MICH. COMP. LAWS. § 168.544f (2004), which governs primary elections, sets the signature requirement at 30,000. MICH. COMP. LAWS. § 168.590b (2004), which governs qualifying petitions for Presidential elections, sets the signature requirement at 1% of total votes cast for governor in the last election which would be 31,776. MICH. COMP. LAWS. § 168.590f governs applicability of certain provisions and refers back to Sec. 544 as controlling. The difficulty with § 168.590f is that it leaves the 1% requirement of § 168.590b with no legislative meaning. While the state chooses to use the lower number of 30,000 and relies on § 168.590f for its determination we should strive to meet the higher 1% requirement of 31,776 which is required under § 168.590b as Michigan is an 'objection' state and the interpretation of statutory construction in this case is clearly the stuff lawsuits are made out of."

We were certain to be challenged in this state. Margaret Guttshall, a veteran Green Party organizer and a law librarian, volunteered to head up the petition drive. She was a dynamo—just who we needed to get the job done

there. She did what she could to get signatures collected, but simultaneously the campaign was seeking the Reform Party line as the safest bet.

Because Ralph had won the national Reform Party nomination, at the end of June the Reform Party of Michigan, through its chair John Muntz and secretary Eleanor Renfrew, certified Ralph and Peter as the nominees of the Reform Party's national convention. Ralph and Peter sent back certifications accepting the nomination on June 25, 2004. Problems ensued, immediately.

Initially, the attack seemed to come not from the Democrats' camp but from another member of Michigan's Reform Party. On July 6, the Michigan Bureau of Elections received a letter from one Matthew Crehan, who "objected" to Muntz and Renfrew's certification of Nader and Camejo on the ground that they were not, in fact, officers of Michigan's Reform Party. Crehan claimed that *he* was "Chairman of the Reform Party," and *his* Michigan party was not affiliated with the national Reform Party. Strikingly, Crehan made no claim that *his* Reform Party had nominated any *other* candidates for president and vice president—he simply objected to Nader and Camejo.

On July 9, 2004, the secretary of state sent a letter to both Crehan and Muntz, saying, "It is apparent that two individuals claim to be the Chairperson of the Reform Party of Michigan and two individuals claim to be the Secretary of the Reform Party of Michigan." (Letter from Terri Lynn Land, secretary of state, to Messrs. Crehan and Muntz, dated July 9, 2004, on file with author.)

On this basis, the secretary of state claimed she could accept no certification of Nader and Camejo until Crehan and Muntz resolved the dispute over who was chairman. The letter referenced problems with the 2000 campaign where two competing factions of the Reform Party of Michigan submitted two different candidates for president. In 2000, the secretary of state had also concluded that it was unclear who had the rightful title of party in Michigan. Pat Buchanan challenged that decision in 2000 but lost, all the way through state and federal appellate courts. (Ibid.) Nonetheless, there was a self-evident difference between the 2000 and 2004 Reform Party disputes: unlike the 2000 campaign dispute, the national Reform Party in 2004 had nominated only one candidate for president, not two.

Just what was going on in Michigan? Was Crehan interjecting a legitimate claim that he was the party's chair? Although it was plausible that Crehan was genuine in his belief that he was chair, he ultimately came to be represented by a well-connected and expensive Democratic law firm—Miller, Canfield, Paddock & Stone—in the Nader campaign's later federal court action, adding more mystery to this strange episode.

It was hard to believe that one person writing a letter to the secretary of state claiming he is a party chairman could suddenly jeopardize our national nomination under Michigan state law. On July 14, Bruce Afran, a law professor in Princeton, New Jersey, who had agreed to take on this case for Nader and Camejo, wrote to the secretary of state: "There is no need for your

office to 'resolve' any dispute since the national party has already resolved this matter in favor of the group of which Mr. Muntz is chair. The Crehan claim amounts in substance to a refusal by an individual or group thereof to accept the ruling of the national party. . . . My clients had commenced a petition signature drive for this election cycle but did not devote the resources they would have in the ordinary case because they learned they were likely to receive the nomination of the Reform Party of the United States of America. Your July 9, 2004 letter refusing to accept their ballot placement in the Reform Party column has forced my clients to recommence said signature drive to maintain their ability to seek access to the ballot by alternate means. . . . Under no circumstances should this submission of signatures be deemed to prejudice Mr. Nader and Mr. Camejo's nomination by the Reform Party and the preservation of their claim to the Reform Party ballot position in Michigan." (Letter from Bruce I. Afran to The Hon. Terri Lynn Land, Secretary of State, and Christopher Thomas, Director, Bureau of Election, dated July 14, 2004.) The state of Michigan refused to budge. On July 15, at about 2:00 p.m. Margaret, our coordinator, went to turn in about 5,400 signatures that we had collected since the Crehan letter, only to find out that the Republicans had turned in at least some 33,000 of their own signatures on our behalf earlier in the day. Indeed, the Republicans filed first on July 15, leaving Margaret in the awkward position of showing up to turn in our signatures only to be asked whether she was filing a supplement to the previously filed Nader signatures. Huh? We were carrying the candidates'

signed statements. How could someone else file first? How could the state accept someone other than the candidate's filings?

Margaret called me from the board of elections office, and I told her to refuse to sign any such paper indicating that these were "supplemental" signatures; I told her to demand an original form, as we were not going to tag team with the Republican filing that we did not authorize or circulate. The board of elections people finally issued a different paper to her. We were not going to validate the Republican signatures because we were filing our signatures merely, as Bruce noted in his letter to the Michigan officials, as "a prophylactic means" of preserving our petition in court to obtain the Reform Party line, which we viewed as our constitutional right. After Margaret's submission, the Republicans apparently came back to turn in another 11,276 signatures about a half hour before the deadline. The Republicans apparently wanted us on the ballot in Michigan—just not on the Reform Party line, which is what we wanted, as that may have drawn more Republicans to vote for Nader/Camejo.

In the meantime, the Democrats were, according to the Republicans, in a state where labor complains about jobs going overseas, busy outsourcing our petitions to India to get the validity of the signatures checked. (Kathy Barks Hoffman, "Republicans Say Democratic Contractor Outsourced Work on Nader Petitions," AP, July 20, 2004.) After the state reviewed the Republican signatures and presumably our 5,400 as well, the Michigan Board of Canvassers deadlocked along party lines on whether to place Nader on the

ballot as an independent. There were enough signatures, but the question was, to whom were they credited? Democratic Party chairman Mark Brewer submitted a 21-page brief acknowledging that Nader and his campaign spokesperson, Kevin Zeese, had repeatedly and publicly repudiated the signatures, which was true. But later this same Democratic Party chairperson would file a complaint against us to the FEC, claiming that we had not repudiated them! Because of the deadlock, we were off the ballot as an independent.

The Michigan Republican Party then filed a suit in the Michigan Court of Appeals, seeking that Ralph be placed on the ballot as an independent candidate for president on the basis of their signatures, which the court ordered on September 3, 2004. We were the only real party in interest here, but we had *nothing* to do with this litigation or signature collection. We didn't even show up in court to protect what would become our windfall ballot status, in large part because we disagreed with the board of elections and thought they had been irresponsible in denying us the Reform Party line. It seemed to us that the state board of elections wanted the Republicans to get us on, perhaps thinking that this would moot the issue and thereby get them out of the Reform Party litigation.

They miscalculated. We wanted the Reform Party line and we litigated to resolve the principle that the national party should be able to decide who is on their state ballot lines and that one person writing a letter to the state board of elections should not be able to keep the nationally selected ticket off

the ballot—especially when the party said he was disaffiliated from the national party at least a year earlier.

Meanwhile, Bruce and I were wondering what kind of nonsense it was for the state to say it had "no duty at all" to investigate, while it interfered with the nomination procedure of a national political party. If some individual wrote a letter purporting to be the Democratic Party of Michigan, would the secretary of state's office just throw up its hands and say, "Golly, gee whiz, John Kerry, you and Edwards can't be on the ballot because one person thinks that he or she is the rightful head of the DNC and we have no duty to investigate"?

On July 27, 2004, we filed our complaint in the federal district court, seeking declaratory and injunctive relief. The U.S. district judge the Honorable Bernard Friedman, heard the case and agreed with the secretary of state that her office had "no clear legal duty" to accept our nomination. (Transcript of Proceedings Before the Hon. Bernard Friedman held on Sept. 1, 2004.)

According to Bruce, Judge Friedman's focus was that because a "dispute" had arisen within the Reform Party as to the identity of its Michigan chair, the secretary of state could not accept the certification of any Reform Party nominees. The court also said that because we did not withdraw from the independent ballot petition pursuant to Michigan election law § 168.590c, we *de facto* "accepted" the signatures and *were barred from placement on the Reform Party line since we had already "accepted" the independent line and*

under Michigan law could not be both the nominee of a party and of an independent petition. (MICH. COMP. LAWS § 168.590c (3): "A candidate who files a qualifying petition shall not be permitted to withdraw his or her candidacy unless a written notice of withdrawal is filed with the filing officer who received the petition. The notice shall be filed not later than 4 p.m. of the third day after the last day for filing a qualifying petition.") The reason we didn't withdraw from the independent line was because of the state's intransigence on the Reform Party line—and because the people of Michigan would have been denied a true electoral choice when arguably they had sought, in two separate ways—by party nomination and by signatures—to put Ralph on the ballot. This was "damned if you do, damned if you don't."

To Afran, sitting in court while Judge Friedman rendered his decision, the hearing seemed the stuff of comedy. Judge Friedman, a Republican appointee, seemed determined to follow the Republican secretary of state's reasoning denying Nader the Reform Party position while repeatedly, from the bench, praising the good work of Nader's counsel. We sought an interlocutory appeal and then filed a notice of appeal; both appeals were consolidated on November 4, 2004, after the election, and oral argument was held on December 1, 2005.

In the appellate court, we argued that the Reform Party's nomination of Ralph and Peter to be its nominees implicated First Amendment associational rights that should have been immune from state intrusion except in the most compelling circumstances. (Final Brief of the Appellants at 17, *Nader v. Land*,

433 F.3d 496 (6th Cir. 2006), Case No. 04-2428 (Jan. 2006) [citing *Democratic Party of United States v. Wisconsin Ex Rel La Follette*, 450 U.S. 107, 121–22 (1981); *Cousins v. Wigoda*, 419 U.S. 477, 491 (1975); and *Democratic Party v. Jones*, 530 U.S. 567, 575 (2000)].) We argued that under the teaching of *Cousins v. Wigoda*, "neither the State of Michigan nor a faction of the Reform Party have any interest in such [presidential/vice presidential] selection superior to that of the national party." (Id., Brief at 21.) Worse, Michigan not only refused to honor the national Reform Party's decision but "used a ministerial state law, MICH. COMP. LAWS. § 168.692a, governing the technical means of transmitting certification as a basis on which to block the national party's nomination of Nader and Camejo." (Id. [citations omitted].)

The *Cousins* Court held that it is the party that has the greater interest, and its national rules as to delegate selection trump any state law. (*Cousins*, 419 U.S. at 491.) The appeal divided along these lines: which takes priority in our constitutional system, a state's interest in the method of transmitting the names of candidates or a national political party's right to promote a unified national ticket free of local interference?

In December 2005, Bruce Afran appeared at the U.S. Court of Appeals for the Sixth Circuit to try to vindicate our claim to the Reform Party line. The main question for the court was now whether the issue was moot. From our perspective, it most certainly was not moot: the principle of a third party's right to have its candidates appear on its state ballot lines was fundamental to

the American political system, and the harm had already been done. We wanted recognition that the harm was done to Ralph and Peter's rights to associate with the Reform Party and its rights to associate with them.

On January 10, 2006, the Court of Appeals for the Sixth Circuit denied our appeal, claiming that it was not moot because the election was over but rather because we "accepted" the independent ballot line, even though our preference was to be on the Reform Party line.

We asked for a rehearing *en banc* to address these issues, noting that if this case "concerned interference by a local faction objecting to John Kerry's nomination by the Democratic National Convention, it is inconceivable that the Court would have refused to reach the merits" and allow a ministerial statute and a local party dissident to interfere with a party and a candidate's constitutional rights. (Rehearing Brief at 9.) The court denied the rehearing, so this sorry state of affairs remains the law in Michigan.