Ohio

If ever there were a battleground state, Ohio was it. Al Gore lost Ohio in 2000 by 165,000 votes, and Ralph had received 117,857 votes. Most political analysts in 2004 believed the election would turn on Ohio.

Ohio had a massive number of problems leading up to the 2004 presidential election. First, there was a record registration of about 100,000 new voters. (*See* Lisa Chamberlain, "GOP Dirty Tricks in Ohio?" *Salon.com*, Oct. 9, 2004 [*available at* http://dir.salon.com/story/news/feature/2004/10/09/ohio_voter_intimidation/index.html].) Second, 68 of the 88 counties still had punch card equipment with an unacceptable 4 percent error rate. (Ibid.) Third, Ohio Secretary of State J. Kenneth Blackwell was a Republican partisan and the chair of the reelect Bush/Cheney committee in Ohio, and he had clear, ultimately unsuccessful, gubernatorial ambitions. He made several egregious pronouncements, including telling people that if they were in the wrong precinct, their provisional ballot would be discarded; he initially required people to have voter registration cards on a special weight of paper, causing a media uproar. In 21 counties, the secretary of state's office also wrongly told ex-felons they had no right to vote. (Ibid.)

The voter registration database in the state was a complete mess. Assistant elections counsel Gretchen A. Quinn told me in a conversation in September that each of the 88 counties had a database *different* than the one in Columbus, Ohio. In another case in the Tenth District, *Van Auken v. Blackwell*, the secretary of state's attorney actually admitted that the secretary of state as of September 29, 2004, had no idea whether county boards of elections kept up-to-date voter registration rolls. (*State ex. Rel. Van Auken v. Blackwell*, 2004-Ohio-5355 (Ohio Ct. App. 10th Dist. 2004).) These are, of course, the

same databases the state used to check the validity of petition signatures submitted by our campaign—even though these databases were horribly out of date. (*See generally* OHIO REV. CODE ANN. § 3513.05.) Petitions are verified by county elections boards.

Ohio did have a relatively manageable ballot access requirement. We needed 5,000 valid signatures by August 19, 75 days before the election. (OHIO REV. CODE ANN. § 3513.257(A).) This deadline was cut short by one day because of conflicting provisions in the statutes when there was to be a substitution for VP filed, and so we had to file on August 18. Ohio had a law saying that you could only turn in 15,000 maximum signatures. (Id.) Ohio also had another quirky requirement that Ralph's photocopied signature had to be on each petition before they could be circulated. (OHIO REV. CODE ANN. § 3513.261.) We had two seasoned pros as our state coordinators, Julie Coyle and Herman Blankenship. They knew Ohio and how to get it done as they had worked for Nader 2000. I figured that the locals could get about 7,500 signatures but that given the viciousness of the Dems and the importance of this state, we were going to need extra help. For insurance, I hired JSM to get about 6,000 more signatures. Ultimately, they got 8,529. Of course, this was going to cost us more—another $12,793.50 for the "insurance policy." We planned on submitting nearly triple the requirement, and we did, with 14,473 signatures which were promptly farmed out to the county boards with the erroneous databases. And then the problems began.

Donald J. McTigue, a Democratic partisan and the former chief elections counsel to the Ohio secretary of state and former counsel to the Ohio Elections Commission, sent letters to all the counties, telling them what to count or not count as a signature on the Nader petitions. The elections division was getting calls asking whether they should

follow the law as they were interpreting it or McTigue's interpretation of the law. They were, after all, used to getting legal instructions from their former counsel. This is what McTigue, late one Sunday in August 2004, wrote to directors and deputy directors of some or all of Ohio's county boards of elections to find in their Monday morning "in boxes," stating in part:

> Given our finding and the experience in other states with regard to the Nader petitions, I write to formally request that your Board carefully review, in an open process, the Nader petitions for compliance with Ohio law. Specifically, we request that:
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> 1) Each signature and each part-petition is reviewed by two board employees, one of each political party.
> 2) The Board staff review process takes place at announced times with an opportunity for representatives of each candidate for President to observe the petition review.
>
> The Board votes to certify the Director's report of the number of qualifying signatures at a public meeting, with an opportunity for the public and/or campaign representatives to first address the Board and have any concerns considered and resolved by the Board prior to certification." (Email from Donald J. McTigue, Esq. to Directors and Deputy Directors of the County Boards of Elections, Aug. 22, 2004, on file with author.)

Not exactly a subtle message to all the Democrats in county elections boards. And what remedy exists for such behavior? None. McTigue was not only the Democratic Party of Ohio's lawyer; he was also Dennis Kucinich's treasurer during the

primaries and then was retained by John Kerry and John Edwards' campaign to handle their interests in the postelection recount the Greens and Libertarians initiated in Ohio in December 2004.

On September 8, the state determined that of the 14,473 signatures, 6,464 were valid and 8,009 were not, with no reason provided for the invalidation of so many signatures. These signatures were never going to be looked at again, despite the known disarray of the county databases and our lawsuit to try to force a court to review the poor administrative process. On September 21, the secretary of state certified the candidacy on our more than 5,000 valid signatures.

In the meantime, the Democrats filed a 27-page protest to challenge the remaining signatures, even before the counties had finished reviewing them. In their kitchen-sink protest, the Democrats claimed thousands of signatures were in print, rather than cursive; they claimed that the signatures did not match registration cards because people signed their initials before their surname. Then they claimed the city, village, or township was not filled in, which is not even required, and then they claimed seventeen additional "defects" on the order of "four signatures did not have their names filled in on the first line," and so on.

You get the picture. Maybe a total of 2,000 to 3,000 signatures were affected by "legitimate" claims, like illegibility or miscounting. But I believe that the vast majority of our 14,473 signatures were stricken because the counties were using outdated databases that had not accounted for the backlogged voter registration forms, as we had numerous newly registered voters signing.

While I was in Florida trying to help the lawyers there, I paid lawyers in Columbus to represent us through the state of Ohio's hearing. They pulled out after September 21, claiming they couldn't afford to represent us anymore. Michael Cassidy, from Cassidy & Associates, graciously stepped into the fray.

The Democratic Party had three law firms hired to push us off the ballot, including Chicago-based powerhouse Kirkland & Ellis. If they couldn't get the signatures overturned, they were going to at least drown us in paper with proceedings, subpoenas, and depositions, a common big firm tactic to overwhelm un- or under-represented opponents.

Assistant elections counsel Gretchen Quinn was the hearing officer on our petitions that ran from September 21 until September 24. On September 17, the secretary of state sent us a *subpoena duces tecum*, commanding us to appear to testify and to produce documents related to what we paid anyone, JSM, Inc., included. The vast majority of our petitioners in Ohio were volunteers.

My deposition went fine, but the hearings were a bloodbath. According to what the petition circulators were telling JSM, and Jenny Breslin was telling us, someone was sending "agents" late at night to our African American petitioners' homes, claiming that they were from the FBI. They were trying to extract information about the circulators' registration, residence, and signature collecting. At the end of it all, they came up with six circulators who, though having lived in Ohio, apparently were registered elsewhere and failed to reregister when they moved back to Ohio, even though they resided at their homes or the homes of relatives while collecting in Ohio. An

unconstitutional requirement that the circulator be a registered voter was being forced on the circulators, in addition to a residency requirement, and as a result all of the signatures on these six circulators' petitions were being invalidated. The Sixth Circuit Court of Appeals would ultimately declare this requirement unconstitutional four years later in litigation we brought to challenge this unwarranted restriction.

In the meantime, on September 28, the SOS issued a 31-page memorandum determining that 2,756 of the 6,464 signatures were invalid for a range of reasons, including improper conduct of people who had circulated who once were registered in Ohio but had reregistered elsewhere, failing to reregister in Ohio, and that certain circulators failed to meet the Ohio requirement of being a resident. (OHIO REV. CODE ANN. § 3501.38, 3503.06(B)(1) (2004).) The secretary of state found that 1,956 signatures of the 2,756 disqualified were because of nonresidency status of the circulators. These were JSM's paid petitioners. (*See* Secretary of State's Finding of Facts and Conclusion of Law, dated Sept. 28, 2004, and cited in *Blankenship v. Blackwell*, Case No. 2:04-CV-965 (Judge Edmund A. Sargus Jr., Magistrate Judge Terence P. Kemp), at 4, dated Oct. 12, 2004.) This put the campaign under the 5,000-signature minimum. Quinn did write in response to the Democrats' allegations of massive fraud: "The evidence does not support any claim that the misconduct is attributable to the Nader campaign, which nonetheless bears the unfortunate consequence of the improper conduct of

certain individuals during the course of the hearing." (*Blankenship v. Blackwell*, 2004-Ohio-5596, 817 N.E.2d 382, 385 (2004).)

But the secretary of state's office was putting a voter registration requirement, beyond a residency requirement, into the decision to invalidate certain signatures. And, much worse, the secretary of state refused to look at the 8,009 signatures that had been dismissed by the counties, even though the hearing officer knew that the counties were using out-of-date databases. (*See State ex rel. Van Auken v. Blackwell*, 2004-Ohio-5355 (Ohio Ct. App. 10th Dist. 2004) [acknowledging Ohio's lack of statutory procedure for a candidate to contest the state's finding of insufficient signatures].)

On October 4, we filed in the Ohio Supreme Court, seeking to rectify the failure of the Ohio administrative process and thus compel the state to review the 8,009 discarded signatures that had been invalidated by being checked against erroneous county databases. Our brief explained that Ohio's county boards submitted evidence that more than 2,300 of the Nader petition signatures were never reviewed by them because the circulator of the petition on which these signatures existed was deemed invalid while simultaneously reporting that the contemporaneous backlog of unprocessed voter registration applications was more than 25,000! There were at least 1,649 signatures filed in the counties admitting to have a cumulative backlog of more than 25,000 unprocessed voter registration cards. (*Blankenship*, 2004-Ohio-5596 at ¶ 12, 819 N.E.2d at 384–85.)

We presented evidence to the Ohio Supreme Court that we lost all of the signatures attributed to at least five circulators whose collection efforts were invalidated

because their respective voter registration applications had not been timely processed because of the outrageous backlog of voter registrations in Ohio. For example, circulator Ronald Waller submitted his application with the Hamilton County board in application number N1398062, but because of the application backlog in Hamilton County, the Hamilton board invalidated him as a circulator and rejected his entire petition, which included eighteen signatures that were, although reviewed, never counted. We said this was also true for the petitions of circulators Beth Steiben, Barbara Perez, Wayne Newman, and Michael Jester. We also alleged that the county boards made unexplainable clerical errors, such as disqualifying the petitions of two circulators and our coordinator Julie Coyle for no valid reason, thereby failing to review even more signatures. Coyle told me that the state disqualified the signatures she had collected because her signature as a 50-year-old did not match that on her ancient registration card—signed when she was 18!

While this was all happening, the Democrats' lawyers, some of whom we were told had been camping in Ohio *since July* to get us off the ballot, tried to get the attorney general to issue subpoenas in the protest hearing. The attorney general said that was not the proper procedure, and they didn't have jurisdiction to do that, so Benson Wolman, a lawyer and former ACLU board member, filed another case in the Court of Common Pleas in Franklin County, Ohio, against J. Kenneth Blackwell (Case No. 04-CVH-09-9201 Judge Fais) on September 2, 2004. Kirkland & Ellis used the court case to end run the AG's office and serve 27 of our circulators—all nonparties to the litigation—with subpoenas. Some of them were given only one or two business days to show up in court with a boatload of documents, such as the following:

All documents, including but not limited to correspondence, memoranda, notes and/or electronic mail, relating to communications with:

a. any persons affiliated with Ralph Nader; and

b. any persons acting as solicitors to obtain signatures for Ralph Nader to qualify him for certification to the ballot for the general election as an independent candidate in Ohio.

All documents, including but not limited to correspondence, memoranda, notes, electronic mail, contracts, bank checks, and bank account statements, relating to your being paid for obtaining signatures for Ralph Nader to qualify him for certification to the ballot for the general election as an independent candidate in Ohio.

All documents, including but not limited to, voter registration cards, drivers' licenses, bank account statements, leases, deeds, property tax assessment, and utility bills evidencing your residency since January 1, 2000. (Notice of Depositions and Requests for Production of Documents, *Wolman et al. v. Blackwell,* Case No. 04-CVH-09-9201, Exh. A. at 3–4.)

The Democrats' lawyers scheduled 27 depositions over a one-week period across the state of Ohio. We were getting calls from the various petitioners asking what to do about these subpoenas. As it turns out, the attorney general filed a motion to quash them and sought a protective order pointing out that the notice of the depositions was completely improper under Ohio civil procedure and that the court did not have jurisdiction, as there had not yet even been an administrative hearing. The hearing was exclusively within the

authority of the secretary of state's office. (*See Wolman et al. v. Blackwell*, Case No. 04-CVH-09-9201, Defendant's Memorandum in Support of Its Motion for a Protective Order [citing *State ex rel. Taft-O'Connor 1998 v. Court of Common Pleas of Franklin County*, 700 N.E.2d 1232, 83 Ohio St. 3d 487 (1998), and *State ex rel. Albright v. Court of Common Pleas of Delaware County*, 572 N.E.2d 1387, 1388-89, 60 Ohio St.3d 40, 42 (1991)].) A day later the state won the decision to quash from the court, and that should have put a halt to the marauding of our petitioners. It did not, even though some of the lawyers knew the petitioners were by then represented by counsel—ours. This is what Amelia (Amy) Hanmer wrote about her experience in a piece titled: "I Have Done Nothing Wrong: Story of a Subpoenaed Nader Petitioner" (on file with author, and Oct. 21, 2004, audio version *available at* www.wksu.org/news/story/17759):

> What had I done to deserve this? I volunteered to petition, I am an Ohio resident, and an Ohio registered voter. Why was I being treated like a criminal?
>
> Someone started calling me repeatedly, leaving only his name, Andrew Clubok, and saying "call me about the subpoena." Who was this guy? I later learned that Andrew Clubok is a lawyer from Washington working with Kirkland & Ellis in Ohio, the firm representing the Democratic party in the lawsuit. I was lucky though. A fellow petitioner in Kent had a private detective arrive at her house. He didn't even identify himself and handed her a card with the name of

the law firm specializing in background checks and requested she call them.

What had she done to deserve this? She volunteered to petition, she's an Ohio resident and an Ohio registered voter. Why were we being intimidated?

Whether you agree or disagree with a candidate is irrelevant. It is the right of all Americans to fight for the candidate of their choice, without fear of legal reprisals. This right was severely called into question by those of us who had the audacity to be involved citizens and support a candidate who will talk about the issue the others won't such as single payer health insurance, a living wage and its flip side, corporate welfare and the gross un-American-ness of free trade.

Indeed. Julie Coyle said that people were going through her garbage looking for evidence in anticipation of the hearings. Just think how desperate—to have people go through the garbage to keep us off the ballot!

On October 6, we also filed a challenge in federal court to try to get on the ballot and sought a temporary restraining order (TRO). We said that of the 2,756 signatures invalidated by the state, 1,971 of those petitions were signed by qualified electors who were registered to vote in Ohio but did not meet the state's residency requirement imposed on circulators. The judge denied the TRO but set a hearing for October 12.

In the brief we filed in support of the TRO, we said that the residency requirement, like the voter registration requirement struck down by the U.S. Supreme Court in *Buckley v. American Constitutional Law Foundation, Inc.* in 1999, was unconstitutional. (*Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S.

182 (1999).) We also cited a decision won by our Wisconsin lawyers back in 2003, where a U.S. district court struck down the residency requirement for circulators based on the First and Fourteenth Amendments to the U.S. Constitution. (*See Frami v. Ponti*, 255 F. Supp. 2d 962, 969 (W.D. Wis. 2003).) The *Frami* Court said that "the First and Fourteenth Amendments compel states to allow their candidates to associate with non-residents for political purposes and to utilize non-residents to speak on their behalf in soliciting signatures for ballot access petitions." (*Id.* at 967.)

But the district court denied us relief, again noting that Ohio's requirement for circulators to be registered voters was likely unconstitutional but that because some of the circulators had claimed to be residents of Ohio, they then committed fraud, and therefore the court was not going to reach this issue. (*Blankenship v. Blackwell*, 341 F. Supp. 2d 911, 921–923 (S.D. Ohio 2004).) To no avail our campaign noted that the secretary of state did not find that the circulators were not residents—but that they were not registered voters. Moreover, the Ohio statute at issue—§ 3503.06—requires that circulators be "registered as an elector" and "reside[] in the county and precinct where the person is registered." (OHIO REV. CODE ANN. § 3503.06(A).) Even so, the court said it would equitably deny relief because of the fraud of the circulators who claimed residency to comply with the unconstitutional law. (*See generally* Mark Brown, "Policing Ballot Access: Lessons from Nader's 2004 Run for president," *Capitol University Law Review* 35 [2006]: 179–190, for details of the hearing outcome.)

We immediately appealed. (*See Blankenship v. Blackwell*, No. 04-4259, (6th Cir. Oct. 18, 2004) *aff'd per curiam Blankenship v. Blackwell*, 103 Ohio St. 3d 567, 817 N.E.2d 382 (Ohio 2004), *cert. denied*, 543 U.S. 951 (2004) (denial of stay).) But the case

on the merits was not considered "submitted for hearing" until almost a year later, in October 2005. We went all the way to the U.S. Supreme Court a few days before the election, seeking emergency relief, but that too was denied. (*Blankenship v. Blackwell*, 543 U.S. 951 (2004).)

Meanwhile, back in state court in Ohio, in a split decision, the Ohio Supreme Court denied Nader/Camejo a place on the Ohio ballot, claiming that a lawsuit filed within six days (two of which were a weekend) after Ralph and Peter were removed from the ballot should have been filed during the time in which Nader was presumptively on the ballot, or even months earlier, to challenge the constitutional infirmities in Ohio law. The Ohio Supreme Court said we should have raised the problems of unconstitutional circulator requirements and outdated voter registration rolls months earlier and thus concluded it "was too late" to force the secretary to review its erroneous procedure and change the ballot, in large part because absentee ballots had already gone out without Nader/Camejo on it. The court said that it "would endanger Ohio's election preparations." (*Blankenship v. Blackwell*, 2004-Ohio-5596 at ¶ 28, 817 N.E.2d at 388.) As if those preparations weren't already damaged, as the country would learn soon enough.

The dissent, written by Justice Pfeifer, found the Ohio law unconstitutional and noted that "to assume it is too late to correct the errors of the Secretary of State is to sell the electoral process short. . . . [T]he law and process relied upon by the county boards and the Secretary of State to remove Nader from the ballot are dubious." (*Id.*, 2004-Ohio-5596 at ¶ 58, 817 N.E.2d at 393 (Pfeifer, J., dissenting).) He wrote that "[b]efore going to the extraordinary measure of removing a name from the ballot, the Secretary of

State should have ordered the local boards to determine whether the registrations of circulators were up to date. Not doing so constituted an abuse of discretion and a violation of the Secretary of State's statutory duty to oversee county boards of elections. [OHIO REV. CODE ANN. § 3501.05(M).] The decision to remove Nader from the ballot was the direct result of an overtaxed voter-registration system that lacked statewide oversight." (*Id.*, 2004-Ohio-5596 at ¶ 57, 817 N.E.2d at 392-93.) Indeed. Bravo Justice Pfeifer.

Imagine our Catch-22: while we were presumptively on the ballot, we were told we should have also sued to get rid of Ohio's unconstitutional laws and the egregious state statute that did not allow for challenges in a proper method of signatures that had been erroneously discarded. So now, not only must a challenging presidential candidate navigate through all the statutory land mines, that candidate also must be clairvoyant and challenge *in advance* of any actual controversy any *potential* unconstitutional aspect of any election law that may be used against him or her!

We also couldn't write onto the Ohio ballot because the deadline had passed and the campaign had not submitted the paperwork because at that point we were presumptively on the ballot. In any event, we sued Ohio to ask that they count write-ins for us, because how could we have filed a declaration to be written in when we were already on the ballot at that point? We argued that of the 34 states that require candidates to file something to get write-in votes canvassed, Ohio's deadline was earlier than most, which are usually just a few weeks before the election. (*See* Richard Winger, "An Analysis of the 2004 Nader Ballot Access Federal Court Cases," *Fordham Urban Law*

Journal 32 [2005]: 585, n.146.) Indeed, Minnesota's deadline was about five days before the election.

We also wondered why the Ohio Democratic Party could substitute an elector only 5 days before the election, but our write-in votes could not be counted on Election Day. No matter, because once again the federal district court denied relief on Election Day, ruling that we were too late and nobody would be harmed by not having his or her write-in vote counted for us! (Order Denying Preliminary Injunction, *Nader v. Blackwell*, No. 04-1052 (S.D. Ohio Nov. 2, 2004).)

In the meantime, I got a call from Mark Brown, a law professor at Capital University in Ohio. He said he was on the board of the Ohio ACLU. He was following our ballot access travails and wanted to help by challenging several aspects of Ohio's unconstitutional law in federal court. Astonished, I told him he was the first civil liberties lawyer, after some two dozen attempts to remove us from the ballot, who had affirmatively called me, instead of me soliciting them. He promised to try to get the ACLU in Ohio on board as an intervenor or amicus. They declined, saying, "Maybe later." *As in "after the election."* Their refusal disgusted him. I was already beyond disgust, but I was most grateful for the professor's help and initiative, which continues to this day.

Brown took the appeal to the Sixth Circuit for us, but in November 2005, the appellate court dismissed it for "want of jurisdiction." (*See Blankenship v. Blackwell*, 429 F.3d 254 (6th Cir. 2005).) We had conceded that the request for injunctive relief—to be placed on the ballot—was moot after the election, but we argued that the court should

still rule on the constitutionality of the circulator requirement. Our claim for declaratory relief and our contention all along was that Ohio's laws were unconstitutional. The appellate court concluded that the only way to address our claim for declaratory relief would be to vacate the district court's judgment dismissing our claim so that they could address the merits and that they lacked authority to vacate a now-moot judgment. They claimed *vacatur* was an extraordinary remedy, and they wouldn't touch it because we filed "too late" and our signature collection firm employed nonresident circulators who had engaged in "substantial fraud." (Id. at 258.) We lost 3–0 in an appellate court that was claiming it was too late for them to address the facial invalidity of an unconstitutional statute. This is a remarkable outcome. Brown then filed a petition for rehearing *en banc* and pointed out that election law claims for declaratory relief routinely survive the election because they are "capable of repetition yet evading review." (*Roe v. Wade*, 410 U.S. 113, 125 (1973).) He noted that the Supreme Court and the Sixth Circuit regularly apply this doctrine to avoid mootness claims. Yet the appellate court did not even address this doctrine. Brown cited at least a half dozen Supreme Court cases, including N*orman v. Reed*, 502 U.S. 279 (1992); *Meyer v. Grant*, 486 U.S. 414 (1988); *Storer v. Brown*, 415 U.S. 724 (1974); *Democratic Party of U.S. v. Wisconsin ex rel. La Follette*, 450 U.S. 107 (1981); *Brown v. Chote*, 411 U.S. 452 (1973); *Rosario v. Rockefeller*, 410 U.S. 752 (1973); and *Moore v. Ogilvie*, 394 U.S. 814 (1969). Brown argued that while the appellate court was claiming *vacatur* was extraordinary, in fact it was the rule, not the exception, in these kinds of cases. (Appellate Brief seeking rehearing *en banc*, at 11.) In fact, he could not locate a single ruling except the one then on appeal that held this kind of outcome. Just as important, Brown also said that the

court was dismissing claims on the pleadings without even providing us with a chance to refute the charges of fraud. He wrote:

> If given the opportunity, Appellants would show that none of this is true. The Democrats concocted their "massive fraud" story as a ploy to harvest Nader's votes. They made the same argument in all battleground states, no matter the facts. "Massive fraud" was not a conclusion; it was a campaign slogan. The truth here is that six JSM circulators, responsible for collecting 754 of Nader's 14,000+ signatures, fraudulently misrepresented their actions or residence. The Nader campaign had no knowledge of these wrongs. This is a far cry from "substantial" fraud on anyone's behalf. (Id. at 14.)

In April 2006, the Sixth Circuit denied us a rehearing *en banc*. We deliberated with Brown about filing an appeal to the Supreme Court, as the Sixth Circuit's decision addressing mootness and *vacatur* was inconsistent with what other courts had held (even the Sixth Circuit itself has said so). In the end, Ralph and I decided we couldn't keep petitioning the Supreme Court to no avail on principle so we decided to try a different route.

On September 28, 2006, we filed another case to get Ohio's unconstitutional laws declared invalid. This case, *Nader v. Blackwell*, in the federal district court of eastern Ohio, is a facial challenge to the registration/residency requirement. We sought $1 in nominal damages, and lost, which we predicted. *Nader v. Blackwell*, No. 06-821 (S.D. Ohio) (dismissed Sept. 19, 2007).

Yet again, we appealed. Our argument was that the provision of Ohio's code, OHIO REV. CODE. § 3503.06, which required—and despite having been amended in 2006,

continues to require—the circulators of a candidate's nominating petitions to be both residents and properly registered voters in Ohio, was unconstitutional. We argued that since neither of our prior cases reached the merits of this issue, the federal court should—and should declare the statute unconstitutional. We also noted that Blackwell's office conceded that we had more than the required 5,000 signatures to get on the ballot in Ohio in 2004 but that they were striking 1,956 voters' signatures that were collected by petitioners who had not met their unconstitutional statute, thereby dropping us below the 5,000 required. On October 29, 2008, we won, 3–0, in *Nader v. Blackwell*, slip op. No. 07-4350 (6th Cir. 2008). In the meantime, Mark Brown of Capital University, on behalf of Brian Moore, a Socialist Party candidate for president, and his petitioners, successfully petitioned the federal court in Ohio to enjoin the state from enforcing the residency requirements on petitioners (OHIO REV. CODE § 3503.06(A) in *Moore v. Brunner*, Case No. 2:08-cv-224 (The Honorable Gregory L. Frost) (S.D. Ohio June 2, 2008).

As many of the post-2004 election reports recount, Ohio's election process was badly broken. Ohioans were disenfranchised from voting for their chosen candidate in our case because of the voter registration database nightmare. Other voting machinery in place didn't work well, either. The machines were placed discriminatorily for the population size, between Democratic and Republican precincts, with some unused and stacked up in warehouses. In 2004, Ohio had the second highest number of "lost" votes for president (behind California), with 97,000 ballots, or 1.7 percent of those cast, failing to record a vote for president, or overvoting. (*See* Tova Andrea Wang, "More Trials and Tribulations for Ohio," Century Foundation, Dec. 30, 2004 [*available at* www.tcf.org].)