Wisconsin

In 2000, Gore won Wisconsin by only 5,708 votes, while we received 94,070 votes. The state has reasonable ballot access requirements and so we were still surprised to face a challenge in Wisconsin. An independent candidate must collect 2,000 signatures starting the first day of the month preceding the month of filing, which is September. Only a maximum of 4,000 may be turned in, so you need better than a 50 percent validity rate. (WIS. STAT. §§ 8.15(6)(a), 8.20(4), 8.20(8)(am), and 10.78(3)(a).) In 2004, that meant starting to circulate on August 1 and turning in by 5:00 p.m. on September 7, 2004.

Savvy local editors such as John Nichols of the *Capitol Times* predicted in mid-August that Nader would have no trouble getting on the ballot here, as had happened in some other states, because "[t]he leaders of the Wisconsin Democratic Party have said they won't try to disqualify Nader. They're not being noble, just smart; Wisconsinites don't approve of candidates or parties that try to get ahead by extracting opponents from the ballot . . . and once the signatures are filed, the state Board of Elections has a history of making every effort to get names on the ballot—indeed, no one can remember the last time a serious presidential campaign failed to qualify." (John Nichols, "Ballot Spot Least of Nader's Worries," *Capitol Times*, Aug. 19, 2004.)

On September 7, our state coordinator Bill Linville, who had voted for Gore in 2000 and was now a member of the International Socialist Organization, turned in 3,685 valid signatures on our behalf, according to the

state elections board staff. He also wrote an impassioned piece in *Counterpunch* in mid-August, describing the principled position of our supporters there. (Bill Linville, "If the Republicans Are Funding Nader, Who is Funding the Democrats? Well, Halliburton for Starters, the Slander Campaign Against Nader Hits," *Counterpunch*, Aug. 19, 2004.) On September 10, with a few minutes left on the deadline, and contrary to Mr. Nichols' prediction, Kim Warkentin, the executive director of the Democratic Party of Wisconsin, through the party's counsel Jeralyn B. Wendelberger, filed a verified complaint against us before the state of Wisconsin's election board.

The entirety of the Democrats' complaint was that we had listed on each petition paper 10 electors, 8 of whom were from each congressional district and two at-large. They claimed, rightfully as it turns out, that the one elector listed from the Seventh Congressional District's home address was within the newly redistricted Eighth Congressional District. But they also claimed that this technicality should bar a candidate from appearing on the ballot since all the language was "mandatory" in the election code. On September 13, we substituted the elector, which is permissible under the code. In Wisconsin, electors do not appear on the ballot, and a voter can move to a different congressional district just ten days before an election and still vote.

Nonetheless, according to Linville, "in the days immediately following our turn-in, the Democratic Party called petition signers, claiming to be the 'Clean Ballot Organization.' They asked petition signers, among other things, the name of the person who had circulated the petition. After this exercise

proved unfruitful, the Democratic Party hired at least 3 well-connected law firms to challenge our petitions forming a legal dream team for anti-democracy." (Bill Linville, "Pre-emptive War on Nader in Wisconsin: Dirty Politics in Land of 'Clean' Government," *Counterpunch*, Oct. 5, 2004.)

The Democrats also tried to make the Pennsylvania/New Mexico claim that if Nader and Camejo were running under a party label in a different state, they couldn't run as an independent in Wisconsin, the same issue about independence versus party affiliation that would fail in both the New Mexico Supreme Court and the Pennsylvania Supreme Court. (Verified Complaint of the Democratic Party of Wisconsin, filed Sept. 10, 2004, at 4.) For this claim to be successful, the Wisconsin courts would have been required to overturn not only the last 80 years of its law but its own well-known history; its favorite son "Fighting Bob LaFollette," in 1924, appeared as an independent in Wisconsin but as the nominee of the Progressive Party in other states. Not to mention the more recent candidacies of Pat Buchanan in 2000, Ralph Nader in 1996, Ross Perot in 1992, John Anderson in 1980, Barry Commoner in 1980, and George Wallace in 1968.

There was virtually nothing to the complaint, but when the state board heard the matter on Tuesday, September 21, they voted only 5–4 that we had substantially complied. The vote was purely along party lines. Democratic Party of Wisconsin spokesman Seth Boffeli accused the board of permitting Nader to circumvent the state statute and claimed that "the law states clearly that all requirements [for ballot access] are mandatory but often with the

State Elections Board you get a vote based on political affiliations." (Ryan Masse, "Nader to Appear on State Ballot," *Badger Herald*, Sept. 22, 2004, *available at* badgerherald.com/news/2004/09/22/nader_to_appear_on_s.php.)

At this point the Democrats got much more legal help. By Friday, September 24, they had added Lester A. Pines and Tamara Packard from Cullen, Weston, Pines & Bach, LLP, and filed an appeal of the elections board to the Dane County Circuit Court. The Honorable Michael N. Nowakowski, a Democrat, decided that our position was correct, that the elector requirement was directory but not mandatory. But the judge said that because the state elections board forgot to use the word "substantial" in their order of September 22, so he was therefore justified in barring Nader from the ballot—even though he could have easily either remanded the order for a proper tweaking or set it aside and/or modified it. Apparently the board had used the term "substantial compliance" throughout the proceeding but not in the order, and this would have been apparent to the judge from the tape he had of the meeting, but he, according to Linville, "claimed to have no access to the hearing where the idea of 'substantial compliance' was discussed at length by the Board." (Linville, "Pre-emptive War on Nader in Wisconsin.")

Our very smart lawyer had a motion in his pocket for this eventuality. He simply left the courthouse, walked down the street, and filed an "Emergency Petition for Writ of Mandamus" to request that the Wisconsin Supreme Court take original jurisdiction and resolve this nonsense

immediately. It worked. By that afternoon, the supreme court issued a stay of the order below, took original jurisdiction, and set up a hearing.

Within 48 hours, the Wisconsin Supreme Court had read the response of the Democratic Party as well as a surprise *amicus* brief filed by the Republican Party of Wisconsin, heard oral argument, and issued a written order. They ruled 7 to 0 to put Ralph and Peter on the ballot. (*State of Wisconsin ex rel. Ralph Nader v. Circuit Court for Dane County, et al.* No. 04-2559-W (Wis. Sept.30, 2004) (unpublished).) One judge merely concurred in the result because he wouldn't have accepted original jurisdiction in the supreme court but couldn't understand why the lower court judge didn't just remand or modify the ruling when the lower court judge also understood that we were correct on the position. (*Id.*, Louis B. Butler Jr. J. concurring.)