

Ralph Nader Off Ohio's Ballot in 2004

Blankenship v. Blackwell (Edmund A. Sargus, Jr.,
S.D. Ohio 2:04-cv-965) and *Nader v. Blackwell*
(George C. Smith, S.D. Ohio 2:04-cv-1052)

Supporters of Ralph Nader for President in 2004 filed a federal action in the Southern District of Ohio on October 6, 2004, challenging the constitutionality of Ohio's requirement that persons circulating petitions to place a candidate on Ohio's ballot be Ohio residents.¹ The plaintiffs sought a temporary restraining order and a preliminary injunction.² There were 14,473 signatures supporting Nader's ballot petition, but only 6,464 were determined to be valid.³ In response to a challenge, 1,956 of those were disqualified because the circulators were not Ohio residents, although they falsely represented that they were.⁴ That meant that Nader had fewer than the 5,000 signatures required to be on the ballot.⁵

On the case's second day, the challengers to Nader's ballot petition moved to intervene,⁶ and Judge Edmund A. Sargus, Jr., ultimately granted intervention, noting that participation of the interveners did not slow down the case.⁷

Shortly after the case was filed, Judge Sargus held a telephonic status conference, as specified by the local rule for temporary restraining orders and preliminary injunctions.⁸ Judge Sargus determined that although time was short there was time for briefing by both sides, a little discovery, and oral argument.⁹ Judge Sargus does not issue injunctions without briefing and evidence from both sides unless he has to.¹⁰

1. [Complaint](#), *Blankenship v. Blackwell*, No. 2:04-cv-965 (S.D. Ohio Oct. 6, 2004), D.E. 1; [Blankenship v. Blackwell](#), 341 F. Supp. 2d 911, 913 (S.D. Ohio 2004); see John McCarthy, *Five Election Lawsuits Filed in Courts in Ohio*, Cincinnati Post, Oct. 12, 2004, at A9; Andrew Welsh-Huggins, *Nader Sues State Over Signature-Gathering Law*, Akron Beacon J., Oct. 8, 2004, at B4.

The statute also requires that circulators be registered voters. [Ohio Rev. Code § 3503.06\(A\)](#); [Blankenship v. Blackwell](#), 429 F.3d 254, 255 (6th Cir. 2005).

2. [Motion](#), *Blankenship*, No. 2:04-cv-965 (S.D. Ohio Oct. 6, 2004), D.E. 2; [Blankenship](#), 341 F. Supp. 2d at 913.

3. [Blankenship](#), 429 F.3d at 255; [Blankenship](#), 341 F. Supp. 2d at 914; [Blankenship v. Blackwell](#), 103 Ohio St. 3d 567, 567–68, 817 N.E. 2d 382, 383–84 (Ohio 2004); see Laura A. Bischoff, *Nader Ruled off Ohio's Ballot*, Dayton Daily News, Sept. 29, 2004, at 1A; Julie Carr Smyth & T.C. Brown, *Cleveland Plain Dealer*, Sept. 29, 2004, at A1.

4. [Blankenship](#), 429 F.3d at 255–56; [Blankenship](#), 341 F. Supp. 2d at 915.

5. [Blankenship](#), 429 F.3d at 255–56; [Blankenship](#), 341 F. Supp. 2d at 914, 916; [Blankenship](#), 103 Ohio St. 3d at 567–68, 817 N.E. 2d at 383–84; see [Ohio Rev. Code § 3513.257\(A\)](#).

6. [Intervention Motion](#), *Blankenship*, No. 2:04-cv-965 (S.D. Ohio Oct. 7, 2004), D.E. 3; [Blankenship](#), 341 F. Supp. 2d at 917.

7. [Blankenship](#), 341 F. Supp. 2d at 917–18 & n.7.

Tim Reagan interviewed Judge Sargus for this report by telephone on August 8, 2012.

8. [Blankenship](#), 341 F. Supp. 2d at 913 n.1; see [S.D. Ohio L.R. 65.1\(a\)](#).

9. Interview with Hon. Edmund A. Sargus, Jr., Aug. 8, 2012.

10. *Id.*

At an October 12 hearing, Judge Sargus denied the plaintiffs relief and dismissed the case.¹¹ Although “[i]t is clear that the requirement of Ohio law that circulators must be residents is a restriction on the guarantees of the First Amendment,”¹² Judge Sargus determined that the fraud employed in obtaining signatures for Nader constituted unclean hands, which disqualified the plaintiffs from equitable relief.¹³

On October 18, the court of appeals denied the plaintiffs an emergency injunction, “because they cannot demonstrate a likelihood of success on the merits.”¹⁴ On November 16, 2005, the court of appeals dismissed the appeal as moot.¹⁵

Two days before the plaintiffs filed the federal action, they sought a writ of mandamus from Ohio’s supreme court.¹⁶ On October 22, 2004, Ohio’s supreme court denied the writ because of laches: the plaintiffs had waited until too close to the election to challenge the applicable Ohio statute.¹⁷ The U.S. Supreme Court declined to enjoin this ruling.¹⁸

On the day of the election, the plaintiffs in the first federal action, joined by the candidates for President and Vice President themselves, filed another federal action challenging the constitutionality of an Ohio statute preventing the counting of write-in votes for Nader because he had not filed a declaration of intent at least 50 days before the election.¹⁹ With the complaint, the plaintiffs filed a motion for a temporary restraining order and a preliminary injunction.²⁰ After oral argument that same day,²¹ Judge George C. Smith denied the motion.²² Judge Smith held that the 50-day filing requirement was “sufficiently narrowly drawn to serve an important state interest and survives close scrutiny.”²³ In addition, the claims were

11. *Blankenship*, 341 F. Supp. 2d 911; *Minutes*, *Blankenship*, No. 2:04-cv-965 (S.D. Ohio Oct. 12, 2004), D.E. 15; Transcript, *Blankenship*, No. 2:04-cv-965 (S.D. Ohio Oct. 12, 2004, filed Oct. 15, 2004), D.E. 21.

12. *Blankenship*, 341 F. Supp. 2d at 922.

13. *Id.* at 924; Transcript, *supra* note 11, at 50 (“the record is replete with what can be deemed, I think without fear of overstatement, instances of actual fraud”); see Stephen Dyer, *Nader Blocked from Ohio Ballot*, Akron Beacon J., Oct. 13, 2004, at B1; Alan Johnson, *Nader’s Plea to Be on Ballot Denied*, Columbus Dispatch, Oct. 13, 2004, at 4B.

14. Order, *Blankenship v. Blackwell*, No. 04-4259 (6th Cir. Oct. 18, 2004), available at [2004 WL 2390113](#); see Lisa Cornwell, *Appeals Court Denies Nader’s Bid for Ballot*, Cincinnati Post, Oct. 19, 2004, at A3.

15. *Blankenship v. Blackwell*, 429 F.3d 254, 259 (6th Cir. 2005).

16. *Blankenship v. Blackwell*, 103 Ohio St. 3d 567, 569, 817 N.E. 2d 382, 385 (Ohio 2004).

17. *Id.* at 567, 571–75, 817 N.E. 2d at 383, 386–89; see Alan Johnson, *Nader Too Late in Requesting Spot on Ballot, State’s High Court Rules*, Columbus Dispatch, Oct. 23, 2004, at 4D.

18. *Docket Sheet*, *Blankenship v. Blackwell*, No. 04A321 (U.S. Oct. 22, 2004) (noting referral of the application by Justice Stevens to the court); see *Supreme Court Declines to Put Nader on Ohio Ballot*, Cincinnati Post, Oct. 27, 2004, at A6.

19. *Complaint*, *Nader v. Blackwell*, No. 2:04-cv-1052 (S.D. Ohio Nov. 2, 2004), D.E. 1.

The statute now requires that the declaration be filed 72 days in advance of the election. [Ohio Rev. Code § 3513.041](#).

20. *Motion*, *Nader*, No. 2:04-cv-1052 (S.D. Ohio Nov. 2, 2004), D.E. 2.

21. *Minutes*, *id.* (Nov. 2, 2004), D.E. 4.

22. *Order*, *id.* (Nov. 2, 2004), D.E. 3.

23. *Id.* at 4.

barred by laches because they came nearly two months after the ballot signatures were challenged, which is what resulted in the write-in candidacy's becoming necessary.²⁴ On March 1, 2005, Judge Smith dismissed the case as moot.²⁵

In 2006, Nader filed a nominal damages suit against Ohio's secretary of state to again challenge the constitutionality of Ohio's residency requirement for petition circulators.²⁶ The court originally assigned the case to Judge Michael H. Watson, but approximately one month later it reassigned the case to Judge Sargus as related to his earlier petition case.²⁷ In 2007, Judge Sargus determined that Nader did not have standing to challenge the secretary's application of the statute when the contested signatures were tainted by fraud, and furthermore the secretary had both qualified and absolute immunity with respect to the constitutionality of his application of the statute.²⁸ In 2008, the court of appeals determined that Nader had standing and the residency requirement was unconstitutional, but the secretary had qualified immunity from suit.²⁹

With many types of cases, and election cases are certainly one of those types, Judge Sargus believes that it is very important for the court to have clear and rigorous procedures for case assignment, such as his court has developed.³⁰ The principle of random assignment is crucially important.³¹ If recusal is required for the assigned judge, the case should be reassigned at random rather than to a convenient colleague, even if that makes reassignment somewhat more cumbersome.³² Senior judges in the Southern District of Ohio are eligible to handle temporary restraining orders in election cases only if they are available for such orders throughout the year.³³

24. *Id.* at 3–4.

25. *Order*, Nader, No. 2:04-cv-1052 (S.D. Ohio Mar. 1, 2005), D.E. 7.

26. *Complaint*, Nader v. Blackwell, No. 2:06-cv-821 (S.D. Ohio Sept. 28, 2006), D.E. 2.

27. *Order*, *id.* (Sept. 28, 2006), D.E. 3; Interview with Hon. Edmund A. Sargus, Jr., Aug. 8, 2012 (noting that a related case is one in which the relief sought could conflict with the outcome of another case).

28. *Opinion* at 5–8, Nader, No. 2:04-cv-1052 (S.D. Ohio Sept. 28, 2006), D.E. 16.

29. *Nader v. Blackwell*, 545 F.3d 459, 478–79 (6th Cir. 2008).

30. Interview with Hon. Edmund A. Sargus, Jr., Aug. 8, 2012.

31. *Id.*

32. *Id.*

33. *Id.*