

Ralph Nader Off Ohio's Ballot in 2004

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

Because Ralph Nader failed to qualify for the 2004 presidential ballot in Ohio, his supporters filed a federal complaint challenging the constitutionality of a requirement that ballot-petition circulators be state residents. Because of unclean hands—petition circulators had falsely claimed to be state residents—a district judge denied the plaintiffs immediate relief. On election day, the Nader campaign challenged Ohio's requirement that write-in candidates file a declaration of intent fifty days before the election. The court of appeals determined that the secretary of state had qualified immunity.

Subject: Getting on the ballot. *Topics:* Getting on the ballot; write-in candidate; laches; intervention; case assignment.

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

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 required 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.

intervention, noting that participation of the intervenors 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 did not issue injunctions without briefing and evidence from both sides unless he had to.¹⁰

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

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.*

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

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

13. *Id.* at 924; *Blankenship* 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), 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. *Blankenship v. Blackwell*, 543 U.S. 951 (2004); see *Supreme Court Declines to Put Nader on Ohio Ballot*, Cincinnati Post, Oct. 27, 2004, at A6.

the counting of write-in votes for Nader because he had not filed a declaration of intent at least fifty 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 fifty-day filing requirement was “sufficiently narrowly drawn to serve an important state interest and survives close scrutiny.”²³ In addition, the claims were barred by laches because they came nearly two months after the ballot signatures were challenged, the reason a write-in candidacy became 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 were certainly one of those types, Judge Sargus believed that it was very important for the court to have clear and rigorous procedures for case assignment, such as his court had developed.³⁰ The principle of random assignment was 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 reassign-

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

The statute later required that the declaration be filed seventy-two days before 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 [hereinafter Nov. 2, 2004, *Nader Order*].

Judge Smith died on April 15, 2020. Federal Judicial Center Biographical Directory of Article III Federal Judges, www.fjc.gov/history/judges.

23. Nov. 2, 2004, *Nader Order*, *supra* note 22, at 4.

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 was 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.*

ment somewhat more cumbersome.³² Senior judges in the Southern District of Ohio were eligible to handle temporary restraining orders in election cases only if they were available for such orders throughout the year.³³

32. *Id.*

33. *Id.*