State, Wisconsin, and Arkansas. These state court victories follow the pattern of Maine and West Virginia—trivial complaints, usually over ambiguous statutory provisions, designed to find something on which a court could strike the validity of the signatures, and these cases are synopsized on my Web site at www.amatomain.com. There are only four battleground states where we lost to Democratic challenges after having submitted sufficient signatures. They are Arizona, Ohio, Oregon, and Pennsylvania. The Ohio facts on my Web site describe how the unconstitutional laws there were finally ruled to be unconstitutional by the unanimous federal appellate court in October 2008 (in a case we initiated in 2006), with a decision that states Ralph was improperly removed from the Ohio ballot in 2004. The circus maximus of Pennsylvania follows.

Pennsylvania

I was holding my breath. At 5:00 P.M. on August 2, Jason Kafoury was not responding to any of my urgent intercom pages. Why?

He was holding his breath. John Slevin, a hired petition firm principal, our eastern and western Pennsylvania state coordinators, and a Slevin deputy were in a mad dash for the secretary of state's office, with more than $100,000 worth of signatures totaling more than 51,000 citizens of Pennsylvania.[79] For reasons that will be explained, Slevin had spent the better part of the last two days combing through the petitions, striking out anything that on its face looked fabricated or forged by the signers while trying to save the good ones. This was a time-consuming endeavor, and they hadn't finished copying the petition before turning it in, a requirement we had of all circulators.

So now Kafoury was actually "MapQuesting" them from Washington, DC through the streets of Harrisburg at 4:45 P.M. They slipped in the door a few minutes before 5:00, and their cell phones went dead. Nothing in Pennsylvania went well.

It is not as if we weren't warned. One of the first emails I got after Ralph declared in February was from a man in Allentown, Pennsylvania saying, "PA is not simply a swing state but one of the dirtiest political whorehouses in America. If we are to succeed in ballot access we need to start now and move aggressively. Ed Rendell will destroy any lesser effort." Indeed, even Governor Ed Rendell, in a 1997 interview

with the *Wall Street Journal*'s editorial board, admitted that Philadelphia judges had "a rich history of corruption."[80] That was a warning.

Pennsylvania had at least six obsolete, court-declared unconstitutional election laws on their books. For example, they had to send out hard copies of consent decrees dated *from 1984* to our statute coordinator as proof of their actual filing dates because the laws on their books were so outrageously out of date.

I also had to write to the secretary of the commonwealth because their legislature hadn't corrected the statutory requirements requiring circulators to be registered voters, a provision that had been struck down in Colorado as unconstitutional in 1999 by the U.S. Supreme Court in *Buckley v. American Constitutional Law Foundation, Inc.* The secretary wrote back, attaching another agreement to abide by the Pennsylvania court's decision in a case called *Morrill v. Weaver*. In that case, brought by the NYU Brennan Center for Justice, the secretary agreed to abide by a circulator definition of "an individual who at the time that individual signs the affidavit on the nomination papers is at least 18 years of age, has been a citizen of the United States for at least thirty days, and has resided in the Commonwealth of Pennsylvania for at least thirty days."[81] So all of our circulators had to meet a thirty-day residency requirement to be considered a qualified elector in order to be eligible to circulate. This meant that we could not send in a road crew but had to hire Pennsylvania residents.

This thirty-day residency requirement is what led us to hire Slevin, who had worked for the Libertarians and who had personally done a ballot drive in Pennsylvania in 1984. I told him I wanted a 75 percent validity rate. For myriad unpleasant reasons, I let Kafoury do all the communication with him.

By June 7, I made a note to myself that our first local state coordinator had only managed to recruit the twenty-one required electors and 1,912 signatures. We then hired a Reform Party devotee, Dan Martino, who made up in energy what he lacked in experience, and a second coordinator for the western part of the state. At that point, mindful of our limited budget, the drain of Texas, and the lawsuits that had begun, I had not hired more than two people in any state—indeed, mostly one or none. We were a campaign of volunteers. But we needed an army for Pennsylvania.

So Slevin was brought in to open up offices and recruit circulators and pay them by the signature to get the job done. He moved with great speed and did a nearly imp
But almost on arrival his office g
eratives, and homeless people wh
obviously fraudulent signatures.
not going to happen.

Pennsylvania required the sig
vote recipient in the last statewid
to be turned in by August 2, 2004
had to appear on the nomination
dent" or "disaffiliated" before th
of petitioning.[83] The Democrats a
2,000 signatures. And this passes

After we turned in Ralph and
Leader H. William ("Bill") DeW
with the AFL-CIO, we will do e
this supreme egotist, who has lo
days after the election—after Ke
very same DeWeese would still b
his [Nader's] name from the ballo
Pennsylvania."[85] Kerry beat Bush
9,273,421 eligible voters, half a
than Republicans, and where his
money through her foundation.[86]

The secretary of state's offic
51,000-plus signatures Slevin had
more than the 25,697 required, t
on August 9. The success was sho

On the same day, lying in wait
moved to set aside our nominatio
sel, including Gregory Harvey o
& Rhoads, LLP;[87] Daniel I. Boo
fifteen other lawyers[88] at Reed Sm
law firms in the world); and Bria
Brian A. Gordon, P.C.[89] Indeed, c
parently told United Press Intern
to war."[90]

The law firm armada challeng
natures filed. They also claimed t
fidavit saying he was "unenrolled

great speed and did a nearly impossible job, for which I was grateful. But almost on arrival his office got overrun by Democratic Party operatives, and homeless people who were demanding pay for turning in obviously fraudulent signatures. With camera crews in tow. This was not going to happen.

Pennsylvania required the signatures of 2 percent of the highest vote recipient in the last statewide election, or 25,697 valid signatures, to be turned in by August 2, 2004.[82] The names of twenty-one electors had to appear on the nomination papers, and they had to be "independent" or "disaffiliated" before their selection and the commencement of petitioning.[83] The Democrats and Republicans each have to file only 2,000 signatures. And this passes as fair.

After we turned in Ralph and Peter's petitions, House Democratic Leader H. William ("Bill") DeWeese told the *Post Gazette*, "Working with the AFL-CIO, we will do everything humanly possible to fight this supreme egotist, who has lost his way."[84] On November 5, three days after the election—after Kerry lost (but won Pennsylvania)—the very same DeWeese would still be boasting that "our efforts to strike his [Nader's] name from the ballot proved successful for John Kerry in Pennsylvania."[85] Kerry beat Bush by only 144,248 votes—in a state of 9,273,421 eligible voters, half a million more registered Democrats than Republicans, and where his wife, Teresa Heinz, gives out tons of money through her foundation.[86]

The secretary of state's office knocked out about 5,000 of the 51,000-plus signatures Slevin had turned in, but seeing that we had far more than the 25,697 required, the secretary certified us for the ballot on August 9. The success was short-lived. Very.

On the same day, lying in wait, eight Pennsylvania registered voters moved to set aside our nomination papers through an armada of counsel, including Gregory Harvey of Montgomery, McCracken, Walker & Rhoads, LLP;[87] Daniel I. Booker and Efrem M. Grail and at least fifteen other lawyers[88] at Reed Smith, LLP (one of the fifteen largest law firms in the world); and Brian A. Gordon of the Law Offices of Brian A. Gordon, P.C.[89] Indeed, one state Democratic Party leader apparently told United Press International (UPI) that "we're ready to go to war."[90]

The law firm armada challenged approximately 37,000 of the signatures filed. They also claimed that Peter Camejo had filed a false affidavit saying he was "unenrolled" or not affiliated with a party when

he was clearly a Green Party member and that alone prohibited him from appearing on the ballot. And they claimed that neither Nader nor Camejo could be on the ballot as Independents because they were Reform Party nominees in Michigan, so they couldn't be Independents in Pennsylvania.[91]

On August 19, 2004, Katharine Q. Seelye of the *New York Times*, one of the few reporters to even write about the breadth of the challenge against us, provided an insight into the scope of this legal campaign. In Pennsylvania, she wrote, "Mr. Booker [Dan Booker from Reed Smith] said that 8 to 10 lawyers in his firm were working pro bono on the case, 80 hours each a week for two weeks, and could end up working six more weeks. The firm also took on more than 100 volunteers. Working with Reed Smith was a Philadelphia lawyer, Gregory M. Harvey, an elections specialist who has been detached from his firm [Montgomery, McCracken, Walker & Rhoads] while he organized 70 volunteers at his end of the state."[92]

Meanwhile, Seelye wrote, "In Pittsburgh, software programmers and data-entry volunteers occupied three conference rooms at Reed Smith, where they created a database of the 47,000 names that were checked against the state's list of registered voters."[93] This is the kind of effort that was spent—and no expense spared from the corporate law firm world—to remove us from the Pennsylvania ballot. In the same article, Charles E. Cook Jr., a veteran nonpartisan political analyst, noted, "The Democrats are making this as difficult and as debilitating for him [Nader] as possible, making him expend blood, sweat and tears for every inch."[94]

Cook was right about the blood and sweat. But this just made me mad as hell. We were going to fight this all the way—through three trips to the Pennsylvania Supreme Court and two refused cert petitions to the U.S. Supreme Court. This is what happened.

We began the long legal haul to refute all this cooked-up effort by the Democrats, beginning with the charges in a hearing before the three-judge Commonwealth Court on August 27, 2004, at which the Honorable James Gardner Colins, Doris A. Smith-Ribner, and Charles P. Mirarchi presided. Within three days, the Commonwealth Court removed us for the first time from the ballot, stating that endorsements from other parties outside of Pennsylvania triggered the state's "sore loser" law. The court said that because Nader and Camejo were on the Reform ballot elsewhere in the country, this law meant that

neither could appear on the b
and that Peter had knowingly
independent when he was a reg
day to the Pennsylvania Supren

Our argument to the Pennsy
that the Commonwealth Cour
sylvania statutes barred the cand
not running as independents i
monwealth Court's ruling cont
it contradicted the last fifty-si
practice of the state was to inc
independents in Pennsylvania
other states.

We gave the example that i
the Conservative Party ticket i
candidates to appear on the bal
was running as a Republican i
being on the ballot in Pennsylv
outka was being allowed in 2
Party in Pennsylvania but was
dent in California; indeed, we
and Ralph Nader both were o
each was running as a membe
same was true of Ross Perot i
Eugene McCarthy and Lenora
Clark, and Barry Commoner i
of George Wallace in 1968; an

We also argued to the Penns
its decision) that Camejo did n
To the contrary, we had gone
with the secretary of the comm
on their interpretation that th
or disaffiliation *only applied to t*
the candidates themselves.

In very simple terms, we arg
that the history of Pennsylvania
secretary of the commonwealt
challengers and the Commonw
error, as the U.S. Constitution

neither could appear on the ballot as Independents in Pennsylvania and that Peter had knowingly filed a false affidavit claiming to be an independent when he was a registered Green.[95] We appealed the next day to the Pennsylvania Supreme Court.[96]

Our argument to the Pennsylvania Supreme Court began by noting that the Commonwealth Court had erred in claiming that the Pennsylvania statutes barred the candidates from the ballot because they were not running as independents in other states. Not only did the Commonwealth Court's ruling contradict the plain language of the statute; it contradicted the last fifty-six years, during which the history and practice of the state was to include numerous candidates who ran as independents in Pennsylvania but were on different party ballots in other states.

We gave the example that in 2004 President Bush was running on the Conservative Party ticket in New York, a fusion state that permits candidates to appear on the ballot of more than one party, but that he was running as a Republican in Pennsylvania. Did that bar him from being on the ballot in Pennsylvania? We also noted that Michael Peroutka was being allowed in 2004 as a member of the Constitution Party in Pennsylvania but was also running as an American Independent in California; indeed, we pointed out that in 2000 Pat Buchanan and Ralph Nader both were on the Pennsylvania ballot even though each was running as a member of another party in other states. The same was true of Ross Perot in 1992; of Lenora Fulani in 1992; of Eugene McCarthy and Lenora Fulani in 1988; of John Anderson, Ed Clark, and Barry Commoner in 1980; of Lyndon LaRouche in 1976; of George Wallace in 1968; and of Henry Wallace in 1948!

We also argued to the Pennsylvania Supreme Court (and it noted in its decision) that Camejo did not file a false affidavit or intend to do so. To the contrary, we had gone over each and every word of that form with the secretary of the commonwealth's office and had filed it based on their interpretation that those statements requiring unenrollment or disaffiliation *only applied to the twenty-one Pennsylvania electors*, not to the candidates themselves.

In very simple terms, we argued to the Pennsylvania Supreme Court that the history of Pennsylvania and the interpretation of its code by the secretary of the commonwealth were correct and that the Democratic challengers and the Commonwealth Court's decision below had to be in error, as the U.S. Constitution would tolerate no other outcome.

While we were up there in the Pennsylvania Supreme Court, and in anticipation of winning and having to go through a painstaking review of the signatures, we also argued that Pennsylvania's hypertechnical standards on reviewing signatures unconstitutionally burdened ballot access and should be overruled. We pointed out that until 1995 Pennsylvania had allowed petitioners to add information in their own hand to the petition to supplement signer's omissions of dates, address, and occupation, which happens when you are moving quickly from one signer to another or as signers are eager to move on. After onerous decisions in *In re Nomination Petition of Flaherty* and *In re Nomination Petition of Silcox*, the petition-gathering process became much more burdensome in Pennsylvania, as these cases require the elector to personally write in everything.[97] This *Flaherty-Silcox* standard, we contended, was an unconstitutional burden on the process—that these decisions had turned nominating petitions into "political sport" in Pennsylvania. We said that "to run for office in Pennsylvania now, not only does one need political support, but now an election lawyer is a prime requirement."[98] Little did we know at this point that we really were going to need a dozen election lawyers and that we would be putting our candidates at risk of losing tens of thousands of dollars.

We also argued that people who had registered after they signed, or who were registered at a different address than where they signed, should be counted. We said that to strike these signatures was unconstitutionally burdensome in that the state's interest was not more compelling than the burden it placed on signature gathering. These were valid electors—they were qualified to vote, no matter what address they signed at, or whether they were registered five minutes or five days before or after they signed, as long as everyone was *eligible* to be a registered voter. Finally, we argued that there was no adequate time or procedure in the Pennsylvania statute to contest the secretary's action of striking signatures and that this violated the due process of the candidates.

The Pennsylvania Supreme Court reversed the Commonwealth Court's order.[99] We had won round one. In part.

The court majority agreed that Nader and Camejo could run as Independents in Pennsylvania and that Camejo had done nothing wrong in following the secretary of state's counsel. But the court rejected our claims that the registrations of people whose application was delivered or postmarked after the day they signed the petition should still count

as if they were voters. The cou
ture requirements in *Silcox* and
nomination petitions also had
place of residence, and the date
their names precisely matching
cards, even if they were validly
terms, you might as well requir
signing!

The court casually dismisse
were burdensome and unconsti
"do not concern the right of an
the steps that a candidate must
the ballot."[100] As if there were
of a candidate to get on the bal
court remanded the case to the
wealth Court to hold an expedi
natures. The Commonwealth C
ordering the campaign to appe
courtrooms to go over the sign
available from 8:30 A.M. until
didn't have counsel, lack of rep
view. Even the other side compl
hearings in multiple courts wit
vey, the Pennsylvania election
told the Associated Press that
ings is "without any preceden
Court was organized in 1969."

The campaign filed a motio
enough people to staff forty-ei
istration review, nor did we hav
rooms for the sixteen hours a da
Court's order. We argued that
and unconstitutionally to us—
administrative method for chec
implying that our failure to co
ballot through "delay." Moreo
court to help the objectors free
on to assess all the court costs
Court denied our motion.[103]

as if they were voters. The court also upheld its very stringent signature requirements in *Silcox* and *Flaherty*, holding that electors who sign nomination petitions also had to personally write their occupation, place of residence, and the date on the petition, as well as have signed their names precisely matching their names on the voter registration cards, even if they were validly registered to vote. In petitioning time terms, you might as well require voters to write a novel while they are signing!

The court casually dismissed our arguments that these standards were burdensome and unconstitutional by stating that these standards "do not concern the right of an individual to vote. Rather, they explain the steps that a candidate must take in order to be properly placed on the ballot."[100] As if there were no connection to burdening the ability of a candidate to get on the ballot and limiting voter choice! The high court remanded the case to the apparently none-too-happy Commonwealth Court to hold an expedited hearing on the validation of the signatures. The Commonwealth Court issued an order an hour or so later, ordering the campaign to appear in forty-eight counties and thirteen courtrooms to go over the signatures.[101] Counsel was supposed to be available from 8:30 A.M. until 10:30 P.M., including weekends! If we didn't have counsel, lack of representation would not prevent the review. Even the other side complained about the holding of simultaneous hearings in multiple courts with outrageous hours. Gregory M. Harvey, the Pennsylvania election law expert retained for the Democrats, told the Associated Press that the court's plan to hold multiple hearings is "without any precedent since the time the Commonwealth Court was organized in 1969."[102]

The campaign filed a motion stating that we simply did not have enough people to staff forty-eight voter services offices for voter registration review, nor did we have the attorneys to staff thirteen courtrooms for the sixteen hours a day contemplated by the Commonwealth Court's order. We argued that this shifted the burden unreasonably and unconstitutionally to us—because Pennsylvania has no rational administrative method for checking signatures—and here was the court implying that our failure to comply would allow us to remain on the ballot through "delay." Moreover, voter services was ordered by the court to help the objectors free of charge, but the court would then go on to assess all the court costs against the losers! The Commonwealth Court denied our motion.[103]

In the meantime, we had replaced Sam Stretton, a maverick Democratic lawyer whom we had hired initially, with Basil Culyba, a Pennsylvania native and topflight DC antitrust litigator who volunteered to take charge of the case. Culyba was not only supremely smart—he could actually litigate. We also flew out Ross A. Dreyer, a lawyer from California, who volunteered to help the campaign. And from time to time we sent in our master of logistics, a Princeton grad named Rob Cirincione—who could do just about anything short of turning straw into gold. I was hiring lawyers to show up for a day here, a day there, but couldn't possibly staff all the courtrooms all the time.

While all this was going on, we had additional nonsense to handle: On August 13, 2004, Louis Agre, a Democratic Party ward leader and lawyer, filed a class-action lawsuit against the campaign on behalf of Ralph Dade and all similarly situated employees. Dade claimed that homeless plaintiffs, numbering somewhere between fifty and one hundred, "were not paid wages for signatures collected" while employed by the campaign. There being absolutely no merit to this case, the Democrats ended up voluntarily dismissing the case with prejudice, after the election, but in the meantime, we got wind of why it was filed.

One of our campaign volunteers, because of his Nader bumper stickers on his car in a public parking lot, was approached by a homeless circulator and told the ruse was this: the campaign was a chump because we were paying $1.00 per signature when they (the homeless) were being paid $2.00 a signature to send in forged ones.

What was he talking about? The idea of the two-lawsuit front was concocted allegedly to get us to "confess" that the signatures were invalid for the purpose of avoiding liability in the bogus class action but valid for the purpose of qualifying for the petition. Allegedly this was supposed to trip us up and explain the one-two lawsuit punch.[104] Stunned by the information, unfortunately our volunteer did not have the presence of mind to get the informant's name or details but did immediately call us. We searched for this homeless person to substantiate the allegation, but ultimately we could not find him or confirm this scheme. To this day, I am hoping someone with information will step forward. Certainly such organized sabotage would explain some of the story that unfolded in this state and it wouldn't be the first time "walking-around money" was used in Philadelphia.[105]

Ultimately, the Commonwealth of Pennsylvania determined that

we had submitted a total of
taining 52,398 signatures. Of
tures contained defects in the
with 336 signatures contained
After eliminating those pages
the commonwealth counted m
facially valid and then stopped
the requirements of the code.
sylvania's election review appli

In the meantime, Pittsburgh
kovic & Scott, LLP, filed a mo
holdings that to be a valid sign
to be a registered voter. The in
ing signatories to the nominat
on an incorrect understanding
instead claimed that qualified e
tered voters alike who signed t

On October 12, Culyba cal
5:00 P.M. the next day. When
done, this is how the numbe
accepted as valid; 32,455 were

- 7,506 were thrown out bec
tered to vote
- 6,411 were registered voter
their registered address
- 7,851 were registered vote
the hand of another, such a
- 1,470 were registered voter
tered in time to vote
- 1,869 had omitted informat
- 1,855 had some affidavit pr
county of the circulator rat
- 8 had printed their signatur
- 166 had illegible signatures
- 687 were considered forged
strike out of the thousands
total filed

we had submitted a total of 1,183 pages of nomination papers containing 52,398 signatures. Of these 1,183 pages, 38 with 2,457 signatures contained defects in the affidavit of the circulator, and 6 pages with 336 signatures contained defects in the preamble of the petition. After eliminating those pages and signatures totaling 4,936 signatures, the commonwealth counted more than 25,697 signatures that appeared facially valid and then stopped counting, determining that we had met the requirements of the code. This is the standard practice of Pennsylvania's election review applied to all candidates.[106]

In the meantime, Pittsburgh lawyer Ronald L. Hicks, of Meyer, Unkovic & Scott, LLP, filed a motion to intervene to challenge the court's holdings that to be a valid signatory to the nomination papers one had to be a registered voter. The intervenors argued to no avail that requiring signatories to the nomination papers to be registered voters rested on an incorrect understanding of Pennsylvania's election statutes and instead claimed that qualified electors included registered and nonregistered voters alike who signed the candidates' nomination papers.[107]

On October 12, Culyba called me to say there would be an order by 5:00 P.M. the next day. When all the tedious reviewing was said and done, this is how the numbers broke down: 18,818 signatures were accepted as valid; 32,455 were stricken for the following reasons:

- 7,506 were thrown out because eligible electors had not yet registered to vote
- 6,411 were registered voters but their current address did not match their registered address
- 7,851 were registered voters but had some information written in the hand of another, such as the date
- 1,470 were registered voters after the date they signed but still registered in time to vote
- 1,869 had omitted information, such as the date
- 1,855 had some affidavit problems—for example, they filled in the county of the circulator rather than the county of the signers
- 8 had printed their signatures
- 166 had illegible signatures
- 687 were considered forged signatures, which we had failed to find and strike out of the thousands we had struck and the more than 52,000 total filed

- 32 only put their nicknames or initials and not their name as registered
- 1,087 were duplicate signatures—they had signed our petitions twice
- 3,513—the rest—were miscellaneous other problems such as people who didn't correctly list their city or township

The final order of the Commonwealth Court removed Ralph Nader and Peter Miguel Camejo from the ballot.[108] I couldn't believe that we had such a low validity rate, even by Pennsylvania standards. But what was most troubling was the Commonwealth Court's language. It turns out that apparently this was the first time they ever had to sit and review so many signatures—prior to us, the most they had reviewed was on the order of 3,000 signatures. Well, we did not bring this challenge on the courts; the Democrats did. But the vitriol just dripped off the order.

The court accused us at every turn of ignoring their warnings and doing "as little as possible prior to the hearings," as if we were supposed to spend untold additional resources to fight a challenge we did not bring or have the burden of proof on, and after we had just spent months paying more than $100,000 to collect more than 51,000 signatures under their unconstitutional laws! Gratuitously, Judge Colins, a Democrat, wrote, "I am compelled to emphasize that this signature gathering process was the most deceitful and fraudulent exercise ever perpetrated upon this Court."[109] What?

Well, excuse us for running for office. The court's language really bothered me. It was as if they were striving to provide a media sound bite. At first I thought the court's hostility was because the judge didn't seem to like Sam Stretton. But he was gone, and Basil Culyba was a true gentleman type of lawyer. What was it that we had done that deserved this kind of inflammatory exaggerated statement? Despite our best efforts to strike the homeless circulators' phony signature ploy, the court found 687 signatures forged by signers, or 1.3 percent of the 52,000 we submitted in a flurry of signatures we had to gather to meet their impossible standards, surrounded by saboteurs at every turn!

One person suggested that this treatment could have been explained by Judge Colins's close association with the governor. According to a piece written by Darcy G. Richardson at the end of August 2004: "Judge Colins and Governor Ed Rendell are old friends and have known each other for more than twenty-five years. 'Fast Eddie,'

as he is commonly known in
ular ex-mayor of Philadelph
cratic National Committee,
Pennsylvania."[110]

Culyba headed to the Penn
To obtain the 25,697 valid
supreme court to budge and
other address or those whos
tioner. In response to our app
Supreme Court to file our br
was another Florida.

We argued four major po
wealth Court erred as a matt
elector to mean only a registe
address at or before the time
This factor alone had exclude
tures, even though we argued
given the Pennsylvania statut
qualified electors—that is, ju
registered voters.

Gaining ballot access was
Section 951 of the Pennsylva
vides, in relevant part, the ter
to major political parties, are
ber of signatures required, w
sign. In each and every para
used is *qualified elector of the S*
nomination paper shall decla
the State or district."[112]

We argued that under the
elector" is a defined term that
all of the qualifications for v
Constitution of this Commo
fied by continued residence
qualification before the next ens
elector did not require someo
be able to be registered to
had already ruled this.[114] Un
Act, individuals had until Oc

as he is commonly known in Philadelphia political circles, is the popular ex-mayor of Philadelphia and former chairman of the Democratic National Committee, who is now serving as Governor of Pennsylvania."[110]

Culyba headed to the Pennsylvania Supreme Court in Harrisburg. To obtain the 25,697 valid signatures, we were going to need the supreme court to budge and include validly registered voters at some other address or those whose information got filled in by the petitioner. In response to our appeal, we were ordered by the Pennsylvania Supreme Court to file our briefs by 2:00 P.M. the following day. This was another Florida.

We argued four major points. First, we said that the Commonwealth Court erred as a matter of law in construing the term *qualified elector* to mean only a registered voter registered to vote at his or her address at or before the time he or she signed our nominating papers. This factor alone had excluded 15,387 otherwise perfectly valid signatures, even though we argued it was unconstitutional and unwarranted, given the Pennsylvania statutory requirement that the signatories be qualified electors—that is, just eligible to vote—rather than already registered voters.

Gaining ballot access was going to turn on the interpretation of Section 951 of the Pennsylvania Election Code.[111] This section provides, in relevant part, the terms under which independents, as opposed to major political parties, are to get on the ballot, including the number of signatures required, who is qualified to sign, and how they shall sign. In each and every paragraph of the relevant sections, the term used is *qualified elector of the State*. For example, "Each person signing a nomination paper shall declare therein that he is a qualified elector of the State or district."[112]

We argued that under the Pennsylvania Election Code a "qualified elector" is a defined term that "*shall* mean any person who shall possess all of the qualifications for voting now or hereafter prescribed by the Constitution of this Commonwealth, or who, being otherwise qualified by continued residence in his election district, *shall obtain such qualification before the next ensuing election*."[113] By definition, a qualified elector did not require someone to *already* be registered to vote, just to be able to be registered to vote. A federal court in Pennsylvania had already ruled this.[114] Under the Pennsylvania Voter Registration Act, individuals had until October 4, 2004, to register to vote for the

November 2, 2004, general election, but their names were being thrown out as petition signers in August![115]

Second, we argued that the lack of uniformity in procedures used by the courts below and the election officials resulted in a shifting of the burden to the petitioners, resulting in a violation of our due process rights and equal protection of the law under both the state constitution and the U.S. Constitution.

Third, we argued that by basing its ruling on hearsay and factual findings that ran afoul of basic evidentiary procedures regarding an elector's registration status, the Commonwealth Court also erred in striking our signatures. This is worth explaining because it helps to understand how so many signatures could get struck even when we were out there asking every petitioner whether he or she was registered.

The court relied on the testimony of election officials who did not bring any evidence—like voter signature cards—but rather stated that they had reviewed the SURE system—the Statewide Uniform Registry of Electors—except in Philadelphia, where nearly 70 percent of our challenges were heard. Philadelphia's system is not part of the SURE system and does not reference voters with the same identification number. As a consequence, someone who is properly registered elsewhere could show up as defective in Philadelphia just because his or her ID is no longer valid there.[116]

The director of the Allegheny County Elections Division testified in court that he didn't have the staff capacity to review all 9,800 of our signatures being challenged from his county, so he asked the Commonwealth Court to excuse his office from conducting a review of the paper voter registration records that were in his office and the electronic voter registration records that were on the SURE system. Instead, Allegheny County used an off-line copy of registration data that they had purposely extracted from the SURE system, which Allegheny County has no responsibility for keeping up to date. As a consequence, the Allegheny County database didn't include critical information—such as the receipt or postmarked dates of the voter registration applications that had been received but were not processed until weeks later! As of September 15, 2004, Allegheny County had some 40,000 registered voter applications, and there was at least a four- to six-week delay in processing these applications into the SURE system—all while the judges were reviewing our petitions. The Allegheny County office had all the paper registrations, but *none* of these were checked

for the purpose of review of
tem.[117] Got that?

Our brief in the Pennsy
Wolosik readily testified on
with some of the voter regis
staff. But even he, when confr
one voter in all of Allegher
name, opined that that voter
cause in Allegheny County's
his address was listed incorr
papers with his proper addr
two digits.[118] These were not
uary 30, 2004 Final Report
view Report of the SURE syst
as to the accuracy, reliability,
computer database system,
SURE system lacks data quali
it 'slow at best and error pron
process in Pennsylvania in che

Finally, we argued that th
tures of those who would be
their addresses were not co
when they signed our petitio
change your address between
as you are still able to vote. F
not prepared to overturn the

On October 19, Culyba
Supreme Court had affirmed t
ballot but that Justice Saylor

The court's opinion, i
CURIAM, decided: October
October, 2004, the Order of
ber 13, 2004 is affirmed. Th
The Application For Interve
Saylor dissents. Dissenting S

That's it. Fewer than than
signatures, all those hours, a
lawyers. Tens of thousands
$100,000-plus we had paid fo

for the purpose of review of our petitions, only the out-of-date system.[117] Got that?

Our brief in the Pennsylvania Supreme Court noted that Mark Wolosik readily testified on cross-examination that he didn't agree with some of the voter registration determinations made by his own staff. But even he, when confronted with the record that there was only one voter in all of Allegheny County registered under a particular name, opined that that voter was not properly registered to vote because in Allegheny County's dubiously maintained off-line database his address was listed incorrectly, whereas he signed our nominating papers with his proper address which varied from their database by two digits.[118] These were not isolated incidences. The state's own "January 30, 2004 Final Report of the In-Process Quality Assurance Review Report of the SURE system . . . contained several notable problems as to the accuracy, reliability, trustworthiness and completeness of that computer database system, including without limitation that '[t]he SURE system lacks data quality and uniformity standards' which makes it 'slow at best and error prone at worst.' "[119] This is what passed for due process in Pennsylvania in checking our petition signatures.

Finally, we argued that the court below erred in striking the signatures of those who would be valid voters and allowed to vote because their addresses were not consistent with their registered addresses when they signed our petitions. In other words, it is not a crime to change your address between elections, and sign our petitions, as long as you are still able to vote. But the Pennsylvania Supreme Court was not prepared to overturn their prior ruling on this point in *Flaherty*.

On October 19, Culyba called me to say that the Pennsylvania Supreme Court had affirmed the lower court's decision to keep us off the ballot but that Justice Saylor was writing a dissent to follow.

The court's opinion, in its entirety, read: "ORDER, PER CURIAM, decided: October 19, 2004, AND NOW, this 19th day of October, 2004, the Order of the Commonwealth Court dated October 13, 2004 is affirmed. The Application For Supersedeas is denied. The Application For Intervention is dismissed as moot. Mr. Justice Saylor dissents. Dissenting Statement to Follow."

That's it. Fewer than than fifty words. I couldn't believe it. All those signatures, all those hours, all those volunteers, all the staff, all the lawyers. Tens of thousands of dollars down the drain, on top of the $100,000-plus we had paid for the signatures. I had to tell Ralph. We

both shook our heads in complete disbelief that this was the process candidates—or just our candidacy—had to go through to have a chance to be presented to the voters in Pennsylvania.

When Justice Saylor's dissent arrived, we felt marginally better. At least one justice got it. Justice Saylor wrote that he believed that "the Commonwealth Court misconstrued relevant statutory authority, thereby assessing the candidates' submissions according to a standard that was more stringent than that which has been prescribed by the Pennsylvania General Assembly. Specifically, it is my position that the Commonwealth Court incorrectly construed the term 'qualified elector' as used in the Pennsylvania Election Code, to subsume a requirement of actual voter registration."[120] He took great pains to demonstrate how differing terms were used throughout the election code, as it recognized distinctions between a qualified elector and a registered voter throughout.[121]

Justice Saylor also noted that if his interpretation regarding the distinction between a qualified elector and a registered voter were the standard in place, the court below would have had to count not only the 1,470 signatures struck because the signer registered after they signed the petition but also the 7,506 signatures that had been invalidated solely because of a lack of registration at a particular address. Thus, 18,818 valid signatures and the 8,976 Justice Saylor would have added would have safely put the campaign over the 25,697 signatures needed. Justice Saylor would have ordered us to be on the ballot.[122]

Perhaps as important to us was Justice Saylor's footnote 13. The media kept repeating to great effect Judge Colins's view about deceit and fraud, but Justice Saylor calmly pointed out the following:

> A review of the tables and exhibits attached to the order, however, suggest that the problem was of a more limited scale (for example, 687 signatures out of 51,273 reviewed—or approximately 1.3% of the signatures—were rejected on the basis of having been forged). Moreover the Commonwealth Court cited no evidence that the candidates were specifically aware of fraud or misrepresentation at the time of their submissions, and the candidates note—and the objectors do not dispute—that when they became aware of any fraudulent conduct connected with specific signatures, they voluntarily withdrew those signatures from consideration. Finally, the Commonwealth Court's disposition is expressly predicated on a tallying of signatures as to which the objectors were

unable to meet their burden
also the subject of my assessm

Mark Brown, a professor at
in Ohio, wrote a law review ar
fication of signatures varied
Colins responsible for invalida
he reviewed and the other two
by the Pennsylvania Supreme
qualified (Judge Smith-Ribne
Mirarchi). No other judge hac
cent, and one judge found tha
valid.[124] What was most curio
had been overturned by the P
eleven judges sitting in revie
the signatures we submitted.

We had been looking into
case this happened. Early in C
that Pennsylvania "has the mo
cept for Oklahoma). To cast a
to write in the names of 21 el

This was too ridiculous.
were going to have to write in
the ballot, to be able to vote
person in Pennsylvania's Depa
porters this, so there were a
that if Nader were off the b
they had to write in *all* twent
spell the names of any of th
laughing.

Richard Winger disabused
ing him proof that in the past
sylvania Department of Electi
as a write-in. The man was "s
the Department of Elections,
Less than a week before the e
Commonwealth of Pennsylva
plaining how to treat votes fo
presidential electors, making i

unable to meet their burden of proof (i.e. valid signatures), which is also the subject of my assessment here.[123]

Mark Brown, a professor at Capital University and a counsel for us in Ohio, wrote a law review article in 2006 detailing how the disqualification of signatures varied wildly from judge to judge, with Judge Colins responsible for invalidating 70 percent of the 10,794 signatures he reviewed and the other two judges, who had been initially reversed by the Pennsylvania Supreme Court, coming in with 73 percent disqualified (Judge Smith-Ribner) and 93 percent disqualified (Judge Mirarchi). No other judge had an invalidation rate more than 54 percent, and one judge found that 79 percent of those he reviewed were valid.[124] What was most curious was that the three-judge panel that had been overturned by the Pennsylvania Supreme Court, among the eleven judges sitting in review, managed to disqualify two-thirds of the signatures we submitted.

We had been looking into write-in procedures for Pennsylvania in case this happened. Early in October, Mike Richardson emailed to me that Pennsylvania "has the most archaic write-in law in the nation (except for Oklahoma). To cast a write-in vote for RN it will be necessary to write in the names of 21 electors!"

This was too ridiculous. According to Pennsylvania, our voters were going to have to write in twenty-one electors, in a small space on the ballot, to be able to vote Nader/Camejo. Nonsense. But the press person in Pennsylvania's Department of Elections had been telling reporters this, so there were a ton of Pennsylvania news stories saying that if Nader were off the ballot, people couldn't just write him in; they had to write in *all* twenty-one presidential electors and not misspell the names of any of them! This was laughable, but I was not laughing.

Richard Winger disabused the state's election person of this by sending him proof that in the past (November 1996, for example) the Pennsylvania Department of Elections did count various spellings of *Nader* as a write-in. The man was "surprised," but then, after checking with the Department of Elections, he said they would do the same this year. Less than a week before the election, the Department of State of the Commonwealth of Pennsylvania issued a two-page memorandum explaining how to treat votes for Ralph, Peter, or any of the twenty-one presidential electors, making it somewhat clear that the votes would be

counted—but as a vote for a presidential elector, not really for president of the United States.[125]

We filed an emergency petition for *certiorari* with the U.S. Supreme Court on October 23, all to no avail. The Court denied us yet again, with no opinion or reasons given, as is typical at the Supreme Court.[126]

To add insult to injury, the Commonwealth Court ruled on January 14, 2005, that Ralph and Peter had to pay all the costs for the court stenographer appearances and transcript preparations, amounting to $81,102.19. We appealed this too in January 2005, and the litigation remains ongoing as this book goes to press.

To now assess costs against the candidates for doing nothing more than defending ballot access was unprecedented in the country and an unconstitutional penalty against our exercise of political speech. Can you imagine a more chilling effect on your right to petition than being liable for $80,000-plus in costs? People in Pennsylvania were going to have to mortgage their homes to run for office. If this was not an unconstitutional burden on candidates' rights under *Anderson v. Celebrezze*, what is? Still the Pennsylvania Supreme Court did not budge.

Instead, in a split decision, the court affirmed the lower court, holding that the Pennsylvania Election Code gives the trial court "discretion" to order candidates to pay and that the trial court did not abuse its discretion. The Pennsylvania Supreme Court treated this as a case of ordinary cost-shifting, rather than one in which constitutional rights were at stake. Indeed, they found "no evidence" that the penalty burdened our rights and that instead it was "rationally related" to the state's interest.[127] The objectors' counsel, Reed Smith, sent Ralph a new letter after the decision, demanding payment by November 3, 2006, for $89,821.23, representing the penalty plus "statutory interest." We told them to go "pound sand," and that we were taking this issue as well to the U.S. Supreme Court.

So on November 16, 2006, we filed yet another petition to the U.S. Supreme Court, seeking *certiorari* on the constitutionality of allowing a state to penalize candidates who submit nomination papers for public office by ordering them to pay $81,102.19 in litigation costs to opponents (not, mind you, a reimbursement to the court). We knew it was a long shot, especially because the Court had already turned us down on the underlying case, but this was truly unique in federal ballot access. In 2006 it was repeated. Pennsylvania decided to assess costs against another federal candidate, Green Party candidate Carl Romanelli, who

had the audacity to run in th
tween Rick Santorum (R) and
want Romanelli in that race b
U.S. Senate, and so they pulle
he was assessed $89,668.16 in
heavily on the flawed Nader c

We argued that the largest
state of Pennsylvania, our cas
Party's strategy nationwide to "
after all, obtained ballot acces
politically motivated litigatio
hauled in to defend signature
of any finding that we had do
gitimate question of statutory
and because of the shoddy st
high registrations and a very
teen of the twenty lawsuits f
states had already been dismis

We argued that the decisio
amount of discretion to pena
First Amendment activity. W
lawful pursuit of achieving p
are classic First Amendment
ing, which should also be gu
dents. The assessment of cost
any legitimate state interest.
tradictory to the Supreme C
prohibits states from forcing
ducting . . . elections."[130] Per
courts the job of verifying pe

The Supreme Court refus
that after the outrage of all th
to pay the attackers on top o
gling, and unwilling to leave F
Smith law firm $20,000 to g
sonal attachment of his busin
to the Western Pennsylvania I
"Committee of 70" since R
case "pro bono."[131] We belie

had the audacity to run in the hotly contested 2006 Senate race between Rick Santorum (R) and Bob Casey (D). The Democrats didn't want Romanelli in that race because of their hopes of taking over the U.S. Senate, and so they pulled the Nader treatment on him too—and he was assessed $89,668.16 in costs and fees in an opinion that relied heavily on the flawed Nader court decision.

We argued that the largest election litigation in the history of the state of Pennsylvania, our case, was a direct result of the Democratic Party's strategy nationwide to "bankrupt the Nader campaign."[128] Ralph, after all, obtained ballot access in 2000 without controversy. Now, the politically motivated litigation campaign against us caused us to be hauled in to defend signatures that were being set aside—not because of any finding that we had done anything wrong but because of a legitimate question of statutory construction of the Pennsylvania code and because of the shoddy state of its database, stressed by unusually high registrations and a very contested political contest. At least fifteen of the twenty lawsuits filed by the Democratic parties in other states had already been dismissed.[129]

We argued that the decision would vest in trial courts an unlimited amount of discretion to penalize candidates for engaging in protected First Amendment activity. We argued that we were engaged in the lawful pursuit of achieving political ends to get on the ballot—these are classic First Amendment rights of speech, assembly, and petitioning, which should also be guaranteed for minor parties and independents. The assessment of costs was neither narrowly drawn nor serving any legitimate state interest. Indeed, we said that it was directly contradictory to the Supreme Court decision in *Bullock v. Carter*, which prohibits states from forcing "candidates to shoulder the costs of conducting . . . elections."[130] Pennsylvania had outsourced to us and its courts the job of verifying petitions.

The Supreme Court refused to hear the case. We couldn't believe that after the outrage of all this orchestrated venom that we would have to pay the attackers on top of it all. Ralph refused. After much wrangling, and unwilling to leave Ralph holding the bag, Peter gave the Reed Smith law firm $20,000 to get out of the lawsuit and so not face personal attachment of his business property. Reed Smith turned that over to the Western Pennsylvania League of Women Voters, and Philly-based "Committee of 70" since Reed Smith claimed they were doing this case "pro bono."[131] We believed that they had already been paid—by

others—and that these were not their fees to collect in the first instance, an argument we made in a subsequent lawsuit, which remains pending.

Ralph went on the offense by writing to the partners of Reed Smith, a behemoth law firm, and to John Kerry personally. Kerry, in his ostrich routine, denied any knowledge. We are, as this book goes to publication, still fighting the Pennsylvania outcome in a lawsuit filed to challenge the Democrats' nationwide conspiratorial effort. In late 2007, we got more evidence. It turns out that the attorney general's office of Pennsylvania was investigating emails allegedly showing political activity occurring inside the Pennsylvania state capital offices and bonuses allegedly paid for, among other things, the "Nader effort."[132] On July 10, 2008, Pennsylvania Attorney General Tom Corbett released a 75-page Grand Jury presentment charging twelve current or former members and employees of the Pennsylvania House Democratic Caucus with criminal conspiracy, theft, and conflict of interest, including for their work on the "Nader effort"—allegedly on taxpayer time, using taxpayer resources. "Bonusgate" as the media calls it (because the state employees allegedly received $188,000 in bonus money for their political work in 2004, and even more in 2005 and 2006), may have additional fallout as Nader attorneys are pursuing these revelations in a Federal Election Commission complaint, along with pleadings to get the Pennsylvania courts to vacate their order to force Ralph Nader to pay costs for ballot access defense, both because of alleged judicial conflicts among members of the Pennsylvania Supreme Court and those seeking to remove Nader from the ballot, as well as the pending indictments.[133]

Dirty Deeds

Meanwhile, on September 22, 2004, the campaign got a call from a DNC whistle-blower. He said that the DNC was actually writing scripts that they gave to people on how to go after all the signers on Nader petitions and that these were being sent from www.dnc.org email addresses. He also said that he had to stay anonymous but that he would love to tell us who he was. He sent us a copy of an email from a principal assistant of Jack Corrigan, with a Word file attached. Corrigan, John Kerry's liaison to the DNC Convention in Boston, practices law at Corrigan & Levy, LLP, in Massachusetts.

The attached file had the f
been created as early as June 1

SCRIPT FOR NADER PETI

Name on Petition: _____

Locality_____

1. Hello, is this {Name on petitio
or not you signed a petition fo

Record a. yes

a. no

b. Signed something

IF "YES", THANK YOU, JU
IF "NO", OR "SIGNED, BU
PROBE AS FOLLOWS:

2. Your name is listed on a petitio
recall signing any kind of petit

Yes

No

Don't know/remem

a. If yes, what were you told y

VERBATIM: _____

b. Can you describe the perso
Old, beard, etc.) RECORD

_____

3. Would you be willing to meet v

Yes No

If yes, thanks. I'll h
Do you have a cell

_____

Imagine the kind of effort t
calling up everyone who signe
ways find someone among the
couldn't remember signing or