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Recent Developments: Nader for President 2004 v. Md. State Bd. of Elections: Invalidation of Petition Signatures Solely on the Basis of the Maryland State Board of Election's "County-Match" Requirement Was Improper and Disenfranchised Voters

Mark Talty

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RECENT DEVELOPMENT

NADER FOR PRESIDENT 2004 V. MD. STATE BD. OF ELECTIONS: INVALIDATION OF PETITION SIGNATURES SOLELY ON THE BASIS OF THE MARYLAND STATE BOARD OF ELECTION'S "COUNTY-MATCH" REQUIREMENT WAS IMPROPER AND DISENFRANCHISED VOTERS.

By: Mark Talty

The Court of Appeals of Maryland held that the invalidation of petition signatures solely on the basis of the Maryland State Board of Election's "county-match" requirement was improper, thereby disenfranchising the signatories. *Nader for President 2004 v. Md. State Bd. of Elections*, 399 Md. 681, 926 A.2d 199 (2007). More specifically, the Court explained that the disenfranchisement of voters based solely on a "county-match" requirement is inconsistent with Article I of the Maryland Constitution, as well as with Articles 7 and 24 of the Maryland Declaration of Rights. *Id.* at 681, 926 A.2d at 199.

On August 2, 2004, the Populist Party ("the Party") filed a petition with the Maryland State Board of Elections ("the State Election Board") in order to certify its party and nominate Ralph Nader as its candidate for President of the United States. The Party attached signature sheets, broken down by county, that contained 15,094 signatures. The State Election Board then sent the signatures to the designated county boards for verification. Each county board then checked the names on the signature sheets with the list of registered county voters and eliminated those names that were not on the county registry. On August 23, 2004, after receiving summary reports from each county board, the State Election Board notified the Party that 5,631 of its signatures had been invalidated.

The petition was 537 signatures short of the 10,000 necessary to meet the requirements of section 4-102 of the Election Law Article in the Maryland Code. As a result, the State Election Board did not certify the Populist Party and Nader was not placed on the 2004 Presidential Election ballot. Five hundred forty-two of the signatures were invalidated because the signers, who were registered voters in the

state of Maryland, signed sheets for a county different from the one in which they were registered.

On August 27, 2004, Nader for President 2004 and the Party (collectively “Nader for President”) filed an action in the Circuit Court for Anne Arundel County seeking expedited review of the State Election Board’s determination and a declaratory judgment indicating that over 536 of the invalidated signatures should have been counted. The circuit court was faced with the issue of whether the invalidation of the registered voter’s signatures pursuant to the “county-match” requirement violated the Maryland Constitution. The circuit court held that the “county-matching” requirement was constitutional and that the Maryland General Assembly had a rational basis for including the restriction in section 6-203 of the Election Law. Nader for President appealed to the Court of Special Appeals of Maryland. The Court of Appeals of Maryland issued a writ of certiorari before any proceedings in that court took place. On September 20, 2004, the Court reversed the circuit court judgment and remanded the case with instructions to enter a judgment declaring section 6-203(b)(2) of the Election Law invalid. In the instant opinion, the Court of Appeals of Maryland set forth its reasons for that Order.

First, the Court of Appeals of Maryland equated the nominating petition process to voting. *Nader*, 399 Md. at 703-04, 926 A.2d at 212. The Court, relying on its decision in *Maryland Green Party v. Bd. of Elections*, stated that the nominating petition process is closely related to the actual right to vote. *Nader*, 399 Md. at 703-04, 926 A.2d at 212 (citing *Maryland Green Party v. Bd. of Elections*, 377 Md. 127, 151, 832 A.2d 214, 228 (2003)). This, the Court stated, is particularly true when political parties must choose their candidates by petition, in which case signing the petition is as important as a party member casting a vote. *Nader*, 399 Md. at 703, 926 A.2d at 212. Because these two actions are so similar, the Court held that the same procedural safeguards that apply to voters casting ballots in an election apply to those signing a nominating petition. *Id.* at 704, 926 A.2d at 212.

The Court of Appeals of Maryland stated that the only qualifications that a person must meet in order to vote in Maryland are those listed in Article I, section 1 of the Maryland Constitution. *Nader*, 399 Md. at 684-85, 926 A.2d at 201 (citing *Green Party*, 377 Md. at 152, 832 A.2d at 229). To vote in Maryland, one must 1) be a citizen of the United States; 2) be at least eighteen years old; 3) be a resident of Maryland; and 4) not be disqualified under Article I section

2 of the Constitution. *Nader*, 399 Md. at 685, 926 A.2d at 201. Furthermore, neither the Maryland General Assembly nor the State Election Board may impose additional requirements on the right to vote because to do so would be in derogation of the Maryland Constitution. *Id.* at 696-97, 926 A.2d at 208.

The State Election Board asserted that it had not created an additional requirement based on the language of Article I, section 1 of the Maryland Constitution. *Nader*, 399 Md. at 704, 926 A.2d at 212. Article I, section 1 states, “A person once entitled to vote in any election district, shall be entitled to vote there until he shall have acquired a residence in another election district or ward in this State.” *Nader*, 399 Md. at 685, 926 A.2d at 201. The Court of Appeals of Maryland disagreed with the State Election Board’s argument. *Id.* at 704, 926 A.2d at 212-13. The Court reasoned that, by requiring petitioners to sign the petition for the county in which they were registered, the State Election Board created an additional voting requirement. *Id.* at 704, 926 A.2d at 212-13. The Court found that the State Election Board improperly invalidated 546 qualified voters based solely on the “wrong county” requirement, which was not a requirement to vote under Article I, section 1 of the Maryland Constitution. *Nader*, 399 Md. at 704-05, 926 A.2d at 212-13.

The Court found that the “county-match” requirement was unduly burdensome on the petition signers. *Nader*, 399 Md. at 705, 926 A.2d at 213. In concluding as such, the Court relied on *Anderson v. Celebrezze*, a United States Supreme Court case, which found that the state has a less important role in regulating Presidential elections than it does in regulating local or state elections. *Nader*, 399 Md. at 705, 926 A.2d at 213 (citing *Anderson*, 460 U.S. 780, 795 (1983)). Because Presidential elections are statewide and not localized, the Court found that the specific county in which a person resides is irrelevant to the determination of whether the person cast an appropriate vote. *Nader*, 399 Md. at 705, 926 A.2d at 213.

In the instant case, the Court of Appeals of Maryland expanded the protections surrounding the right to vote by recognizing the right to form a political party and nominate a candidate to represent that party. The Court’s decision in this case will have a major impact on the way petition verification is conducted in Maryland. The disenfranchisement that results from the disqualification of just a few voters can eliminate smaller political groups from the presidential nomination process. With the 2008 Presidential election looming, one which many believe will be the most important in a generation, this

opinion by the Court of Appeals of Maryland should serve as some assurance to the voters of Maryland that each of their voices will be heard.