

## Party Loyalty Oath

### *Kucinich v. Texas Democratic Party* (Lee Yeakel, W.D. Tex. 1:08-cv-7)

Two months before Texas’s 2008 Democratic presidential primary election, a candidate filed a federal constitutional challenge to the state party’s loyalty oath for presidential candidates. The district court conducted a proceeding on the day that the case was filed. The judge and the parties agreed to a bench trial nine days later. The court ruled against the candidate at the conclusion of the trial and issued an opinion six days later. The court of appeals agreed that the loyalty oath was not unconstitutional.

*Subject:* Getting on the ballot. *Topics:* Getting on the ballot; party procedures.

Two months before Texas’s March 4, 2008, presidential primary election, Democratic candidate Dennis Kucinich, and Willie Nelson in his capacity as a voter, filed a federal complaint in the Western District of Texas’s Austin courthouse challenging the constitutionality of a loyalty oath required by the Texas Democratic Party: “I further swear that I will fully support the Democratic nominee for President, whoever that shall be.”<sup>1</sup> With their complaint, on January 2, 2008, the plaintiffs also filed a motion for a temporary restraining order and a preliminary injunction.<sup>2</sup>

Despite signing an identical ballot application in 2004, which contained the same oath, Kucinich informed the [Texas Democratic Party] that he would only pledge to support a nominee who would not employ war as an instrument of foreign policy, and that he would not re-sign the oath based on this firm belief.<sup>3</sup>

Judge Lee Yeakel heard the motion on the day after it was filed.<sup>4</sup> He was able to act quickly on the case because the clerk’s office was alert to the filing of urgent cases, and good attorneys knew that providing the court with cour-

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1. Complaint, *Kucinich v. Tex. Democratic Party*, No. 1:08-cv-7 (W.D. Tex. Jan. 2, 2008), D.E. 1; *Kucinich v. Tex. Democratic Party*, 563 F.3d 161, 163 (5th Cir. 2009); *Kucinich v. Tex. Democratic Party*, 530 F. Supp. 2d 879, 882 (W.D. Tex. 2008); see Amended Complaint, *Kucinich*, No. 1:08-cv-7 (W.D. Tex. Jan. 4, 2008), D.E. 8; see also Robert T. Garrett, *Kucinich Fighting Texas Loyalty Oath*, Dallas Morning News, Jan. 4, 2008, at 12A; John Moritz, *Willie Joins Kucinich in Ballot Battle*, Fort Worth Star-Telegram, Jan. 4, 2008, at B1; R.G. Ratcliffe & Peggy Fikac, *Hot Local, National Races to Fill Long Primary Ballot*, Hous. Chron., Jan. 3, 2008, at B1.

2. Motion, *Kucinich*, No. 1:08-cv-7 (W.D. Tex. Jan. 2, 2008), D.E. 2.

3. *Kucinich*, 530 F. Supp. 2d at 882.

4. Docket Sheet, *Kucinich*, No. 1:08-cv-7 (W.D. Tex. Jan. 2, 2008).

Tim Reagan interviewed Judge Yeakel for this report by telephone on September 12, 2012. Judge Yeakel retired on May 1, 2023. Federal Judicial Center Biographical Directory of Article III Federal Judges, [www.fjc.gov/history/judges](http://www.fjc.gov/history/judges).

tesy copies of an electronically filed complaint improved the odds of the court's finding out about the case promptly.<sup>5</sup>

It was Judge Yeakel's practice to promptly contact the plaintiff's attorney in an emergency case to find out who the likely defense attorneys were going to be and then promptly contact them.<sup>6</sup> Judge Yeakel would shift pending obligations in other cases to accommodate emergency matters.<sup>7</sup> Often, district court proceedings are just a whistle stop on a trip to higher courts, so the sooner the case can move on its journey the better.<sup>8</sup>

For emergency matters, Judge Yeakel discouraged discovery and encouraged stipulation to facts.<sup>9</sup> The facts in this case were undisputed.<sup>10</sup>

At the hearing, the parties agreed to a schedule culminating in a bench trial on January 11.<sup>11</sup> After the trial and a fifty-minute recess, Judge Yeakel resolved the case against Kucinich.<sup>12</sup> Six days later, he issued an opinion explaining his ruling.<sup>13</sup>

Judge Yeakel applied the Supreme Court's balancing test for evaluating the constitutionality of ballot restriction laws.<sup>14</sup> In *Anderson v. Celebrezze*, the Court determined that Ohio's March filing deadline for independent presidential candidates, such as the plaintiff John Anderson, was earlier than could be justified by Ohio's asserted interests.<sup>15</sup> In the 1992 case of *Burdick v. Takushi*, the Court determined that Hawaii's interests in proscribing write-in voting outweighed candidates' and voters' interests in having write-in options.<sup>16</sup> In 2000, the Court resolved *California Democratic Party v. Jones* by striking down California's blanket primary scheme<sup>17</sup> in which "each voter's

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5. Interview with Hon. Lee Yeakel, Sept. 12, 2012.

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. Order, *Kucinich v. Tex. Democratic Party*, No. 1:08-cv-7 (W.D. Jan. 3, 2008), D.E. 5.

Willie Nelson did not personally attend the hearing, which probably relieved the court of increased media attention. Interview with Hon. Lee Yeakel, Sept. 12, 2012.

12. Judgment, *Kucinich*, No. 1:08-cv-7 (W.D. Tex. Jan. 11, 2008), D.E. 24; Transcript at 35–37, *id.* (Jan. 11, 2008), D.E. 38; *Kucinich v. Tex. Democratic Party*, 530 F. Supp. 2d 879, 881–82 (W.D. Tex. 2008); see R.G. Ratcliffe, *Judge Sides with Texas Dems, Keeps Kucinich Off State Ballot*, Hous. Chron., Jan. 12, 2008, at A23 (reporting that Judge Yeakel determined that "free association rights of Texas Democrats as a group outweighed Kucinich's rights as an individual").

13. *Kucinich*, 530 F. Supp. 2d 879.

14. *Id.* at 883–86.

15. 460 U.S. 780, 796–806 (1983); see *id.* at 789–90 (constitutional challenges to state election laws must often be resolved by balancing the state's interests against those of the candidates and the voters).

16. 504 U.S. 428, 434–40 (1992); see *id.* at 434 ("the rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights").

17. 530 U.S. 567, 577–86 (2000).

primary ballot . . . lists every candidate regardless of party affiliation and allows the voter to choose freely among them.”<sup>18</sup>

Judge Yeakel determined,

The oath before the Court is not an instance of a party seeking to disenfranchise classes of people on the basis of race, sex, national origin, or religion. . . .

The oath only restricts Kucinich’s speech to the extent his conscience chooses to be restricted. . . . The dominant right of association in this case lies with the party.<sup>19</sup>

Kucinich immediately appealed.<sup>20</sup> The district court,<sup>21</sup> the court of appeals,<sup>22</sup> and the Supreme Court<sup>23</sup> all denied him stays pending appeal.<sup>24</sup> On January 25, 2008, Kucinich informed the court of appeals that expedition of his appeal would not be necessary because he had dropped out of the race for the Democratic nomination.<sup>25</sup> On March 24, 2009, the court of appeals agreed with Judge Yeakel that the loyalty oath was not unconstitutional.<sup>26</sup>

The district court<sup>27</sup> and the court of appeals<sup>28</sup> rejected pro se efforts in 2008 and 2009 by a federal prisoner to intervene in the case.

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18. *Id.* at 570.

19. *Kucinich*, 530 F. Supp. 2d at 885.

20. Docket Sheet, *Kucinich v. Tex. Democratic Party*, No. 08-50038 (5th Cir. Jan. 15, 2008); Notice of Appeal, *Kucinich v. Tex. Democratic Party*, No. 1:08-cv-7 (W.D. Tex. Jan. 14, 2008), D.E. 26.

21. Order, *Kucinich*, No. 1:08-cv-7 (W.D. Tex. Jan. 15, 2008), D.E. 32.

22. Order, *Kucinich*, No. 08-50038 (5th Cir. Jan. 17, 2008).

23. *Kucinich v. Tex. Democratic Party*, 552 U.S. 1161 (2008); see *High Court Refuses to Hear Kucinich Case*, Hous. Chron., Jan. 19, 2008, at A21.

24. *Kucinich v. Tex. Democratic Party*, 563 F.3d 161, 163 (5th Cir. 2009).

25. Motion, *Kucinich*, No. 08-50038 (5th Cir. Jan. 25, 2008); see Order, *id.* (Jan. 29, 2008) (vacating expedited status).

26. *Kucinich*, 563 F.3d 161.

27. Order, *Kucinich v. Tex. Democratic Party*, No. 1:08-cv-7 (W.D. Tex. July 2, 2009), D.E. 53 (dismissing a motion by a would-be pro se intervenor for recusal).

28. Order, *Tex. Democratic Party v. Riches*, No. 09-50643 (5th Cir. Nov. 17, 2009) (dismissing recusal appeal for lack of being a party to the underlying action); Order, *Kucinich v. Tex. Democratic Party*, No. 08-50947 (5th Cir. Oct. 17, 2008) (dismissing a purported appeal for failure to pay the filing fee).