

## Loyalty Oath

### *Parson v. Alcorn (M. Hannah Lauck, E.D. Va. 3:16-cv-13)*

Days before the distribution of absentee ballots was to begin, three voters filed a challenge to a party's requirement that voters in its presidential primary election sign a statement that the voters are members of the party. The district judge heard the case one week after it was filed and denied the plaintiffs immediate relief, reasoning, "A private, unenforceable pledge does not pose a severe burden." The party decided not to use the loyalty oath after all, and the plaintiffs dismissed their appeal.

*Subject:* Voting procedures. *Topics:* Party procedures; primary election; absentee ballots.

Three voters filed a federal complaint in the Eastern District of Virginia on January 6, 2016, against commonwealth election officials, alleging that ballots that would begin to be mailed out beginning the following week for a March 1 Republican presidential primary election would improperly include a loyalty oath requiring the voter to sign a statement that the voter was a Republican.<sup>1</sup> With their complaint, the plaintiffs filed a motion for a temporary restraining order and a preliminary injunction.<sup>2</sup>

On January 8, Judge M. Hannah Lauck ordered briefing completed by January 12 and set a hearing for January 13.<sup>3</sup> Also on January 8, the defendants moved for joinder of the Republican Party as a necessary party.<sup>4</sup> Judge Lauck granted the motion on January 11.<sup>5</sup>

The January 13 hearing concluded at 2:30 p.m., and Judge Lauck asked for supplemental briefing served by email by 6:00.<sup>6</sup> "I don't think I will be able to issue a memorandum opinion tomorrow, but I think I'm going to issue an order tomorrow."<sup>7</sup>

Judge Lauck denied the plaintiffs immediate relief on January 14, promising an opinion to follow.<sup>8</sup> "A private, unenforceable pledge does not pose a

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1. Complaint, *Parson v. Alcorn*, No. 3:16-cv-13 (E.D. Va. Jan. 6, 2016), D.E. 1; *Parson v. Alcorn*, 157 F. Supp. 3d 479, 490 (E.D. Va. 2016); see Jenna Portnoy, *Trump Backers Sue Over GOP Oath*, Wash. Post, Jan. 7, 2016, at B1.

2. Motion, *Parson*, No. 3:16-cv-13 (E.D. Va. Jan. 6, 2016), D.E. 2, 3; *Parson*, 157 F. Supp. 3d at 490; Transcript at 4, *Parson*, No. 3:16-cv-13 (E.D. Va. Jan. 13, 2016, filed Feb. 2, 2016), D.E. 39 [hereinafter *Parson* Transcript].

3. Order, *Parson*, No. 3:16-cv-13 (E.D. Va. Jan. 8, 2016), D.E. 6; see *Parson* Transcript, *supra* note 2; *Parson*, 157 F. Supp. 3d at 490; Minutes, *Parson*, No. 3:16-cv-13 (E.D. Va. Jan. 13, 2016), D.E. 21.

4. Motion, *Parson*, No. 3:16-cv-13 (E.D. Va. Jan. 8, 2016), D.E. 7; *Parson*, 157 F. Supp. 3d at 490.

5. Order, *Parson*, No. 3:16-cv-13 (E.D. Va. Jan. 11, 2016), D.E. 11; *Parson*, 157 F. Supp. 3d at 490; *Parson* Transcript, *supra* note 2, at 4 (noting also, "The Republican Party of Virginia did not file a written response to the pending motions").

6. *Parson* Transcript, *supra* note 2, at 107–08.

7. *Id.* at 107.

8. Order, *Parson*, No. 3:16-cv-13 (E.D. Va. Jan. 14, 2016), D.E. 27; *Parson*, 157 F. Supp. 3d

severe burden.”<sup>9</sup> The plaintiffs immediately appealed,<sup>10</sup> and Judge Lauck issued her opinion on the following day.<sup>11</sup>

The Republican Party decided not to use the loyalty oath after all, but only after absentee voting had begun.<sup>12</sup> The plaintiffs voluntarily dismissed their appeal on February 18.<sup>13</sup> Their candidate finished first in the primary election.<sup>14</sup>

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at 485, 490.

9. *Parson*, 157 F. Supp. 3d at 494.

10. Notice of Appeal, *Parson*, No. 3:16-cv-13 (E.D. Va. Jan. 14, 2016), D.E. 31.

Both the court of appeals and Judge Lauck denied the plaintiffs an injunction pending appeal. Order, *Parson v. Alcorn*, No. 16-1051 (4th Cir. Jan. 14, 2016), D.E. 10; Order, *Parson*, No. 3:16-cv-13 (E.D. Va. Jan. 14, 2016), D.E. 33; *Parson*, 157 F. Supp. 3d at 490.

11. *Parson*, 157 F. Supp. 3d 479; see Antonio Olivo, *Va. Ruling Keeps GOP Oath in Play*, Wash. Post, Jan. 15, 2016, at B1.

12. See Laura Vozzella & Antonio Olivo, *GOP Scraps Loyalty Pledge Trump Called “Suicidal,”* Wash. Post, Jan. 31, 2016, at C12.

Another judge in the same courthouse later lamented about the case that a settlement reached so late in the game required a substantial expenditure of resources that could have been saved had the settlement been reached earlier. Transcript at 20, *Correll v. Herring*, No. 3:16-cv-467 (E.D. Va. June 28, 2016, filed July 5, 2016), D.E. 31.

13. Order, *Parson*, No. 16-1051 (4th Cir. Jan. 18, 2016), D.E. 20.

14. See Graham Moomaw, *Rural Voters Lift Trump Over Rubio*, Richmond Times-Dispatch, Mar. 2, 2016, at 1A; Paul Schwartzman, *Trump Fends Off a Strong Rubio; Clinton Sails*, Wash. Post, Mar. 2, 2016, at A1.