


UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

FILED

JAN - 2 2008

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY  DEPUTY CLERK

DENNIS J. KUCINICH,
12217 Milan Avenue
Cleveland, OH 44111

KUCINICH FOR PRESIDENT 2008, INC,
550 East Walnut Street
Columbus, Ohio 43215

WILLIE NELSON,
1100 Bee Creek Road
Spicewood, TX 78669

Plaintiffs,

v.

TEXAS DEMOCRATIC PARTY,
505 West 12th Street, Suite 2000
Austin, TX 78701,

PHIL WILSON, individually and in his
official capacity as Secretary of State,
State Capitol, Room 1E.8
Austin, TX 78701

Defendants.

CIVIL ACTION NO. **A08CA0007LY**

**COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE
RELIEF**

**TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION
REQUESTED**

Plaintiffs challenge Defendants' refusal to allow Dennis J. Kucinich to participate in the State of Texas Democratic Party's primary election for President of the United States under the First and Fourteenth Amendments of the United States Constitution, and 42 U.S.C. § 1983. In support of their Complaint, Plaintiffs state and allege as follows:

I. PARTIES

1. Plaintiff Dennis J. Kucinich seeks to be a candidate at the State of Texas Democratic Party's primary election for President of the United States who has qualified for federal matching funds pursuant to 26 U.S.C. §9033.
2. Plaintiff Kucinich for President 2008, Inc. is the official campaign committee of Dennis J. Kucinich.
3. Plaintiff Willie Nelson is a qualified elector of the State of Texas who intends to support Dennis J. Kucinich in the primary election.
4. Defendant Texas Democratic Party is the entity responsible for promulgating and accepting the application of candidates seeking election to the office of President on the Democratic General Primary Ballot in Texas.
5. Defendant Phil Wilson is the Texas Secretary of State who has the authority over all Texas Elections.

II. JURISDICTION AND VENUE

6. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 in that it arises under the Constitution of the United States. This Court has jurisdiction to grant both declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202.
7. Venue in this district and jurisdiction is proper under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claim occurred in this district.

III. FACTS

8. Plaintiffs incorporate by reference paragraphs 1 through 7 as if fully set forth here.
9. Plaintiffs, Dennis J. Kucinich and Willie Nelson, by and through counsel, bring this

Complaint for Declaratory Judgment and Injunctive Relief against Defendants to prevent them from not certifying Plaintiff Kucinich for a place on the Texas presidential primary ballot due to Plaintiff Kucinich's refusal to swear that he will fully support the Democratic nominee for President, whoever that shall be.

10. Plaintiff Kucinich properly and timely filed his application for a place on the Texas primary ballot on December 28, 2007 with Defendant Texas Democratic Party.

11. On January 2, 2007, a representative from the Texas Democratic Party verbally informed a representative of Plaintiff Kucinich that Plaintiff Kucinich's application is defective and his candidacy would not be certified because Plaintiff Kucinich had crossed out the following loyalty oath found within the application: "I further swear that I will fully support the Democratic nominee fore President, whoever that shall be."

12. Although Deferndant Texas Democratic Party had waited five days to inform Plaintiff Kucinich of its refusal to accept the application, the representative of the Texas Democratic Party informed the representative of Plaintiff Kucinich that the application only would be accepted if it was re-signed with the loyalty oath and faxed to the Texas Democratic Party the same day, January 2, 2007.

13. The loyalty oath is not a legal requirement in Texas and is found in Article VII of Defendant Texas Democratic Party's rules. The Texas Republican Party does not require a similar loyalty oath.

14. The representative of the Texas Democratic Party informed the representative of Plaintiff Kucinich that the application was otherwise sufficient.

15. Defendant Texas Secretary of State will not place Plaintiff Kucinich's name on the Democratic Presidential Primary Ballot in Texas without Plaintiff Kucinich signing the loyalty

oath required by Defendant Texas Democratic Party, which will thereby deprive Plaintiff Nelson's ability to vote for his fully-qualified candidate of choice.

IV. CAUSES OF ACTION

Count I

16. Plaintiffs incorporate by reference paragraphs 1 through 15 as if fully set forth here.
17. Defendant Texas Democratic Party's oath requirement for candidates in order to participate in the primary election for President of the United States violates the First and Fourteenth Amendments to the United States Constitution.

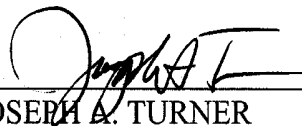
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully demand judgment including the following:

- a. That a Temporary Restraining Order be issued restraining Defendant Texas Democratic Party from certifying to Defendant Texas Secretary of State a list of candidates and restraining Defendant Texas Secretary of State from accepting any list of candidates for the Democratic presidential primary election that does not include the name of any qualified candidate who has refused to swear to fully support the Democratic nominee for President, whoever that shall be;
- b. That Defendant Texas Democratic Party and Defendant Texas Secretary of State be preliminarily and thereafter permanently enjoined from certifying to Defendant Texas Secretary of State a list of candidates and restraining Defendant Texas Secretary of State from accepting any list of candidates for the Democratic presidential primary election that does not include the name of any qualified candidate who has refused to swear to fully support the Democratic nominee for President, whoever that shall be;

- c. This Court enter a declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, declaring the Texas Democratic Party's oath requirement violates the First and Fourteenth Amendments to the United States Constitution both facially and as applied under the facts of this case;
- d. For the costs of this proceeding;
- e. This Court grant Plaintiffs their reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and
- f. For other such relief as deemed appropriate by this Court.

Respectfully submitted,



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* Pro Hoc Vice Motions to Follow