

A County's Improper Refusal to Accept Online Voter Registrations from the State's Website

Mullins v. Cole

(Robert C. Chambers, S.D. W. Va. 3:16-cv-9918)

Plaintiff . . . recently moved to Cabell County[, West Virginia,] to attend Marshall University and used the Secretary of State's website to update her voter registration information prior to the October 18[, 2016,] deadline, but that information was not and will not be processed by Defendant [Clerk of Cabell County] without action from this Court.¹

"Of the fifty-five counties in West Virginia, all but Cabell County allow residents to register using the online system."²

The plaintiff filed a class action complaint in the Southern District of West Virginia's Huntington courthouse on Thursday, October 20.³ With her complaint, the plaintiff filed a motion for a temporary restraining order.⁴

On Friday, Judge Robert C. Chambers ordered hand service on the defendant clerk by 5:00 p.m. that day, ordered a response to the motion filed by noon on Monday, and set the case for hearing Tuesday morning.⁵ "Although [the plaintiff] filed her motion as a request for a temporary restraining order, the Court held a full adversary hearing on the motion. . . . [, converting] the action into one for a preliminary injunction at the hearing."⁶

At the hearing, Judge Chambers granted the plaintiff a preliminary injunction, with an opinion to follow.⁷ The clerk "agreed to treat all otherwise qualified individuals who timely used the West Virginia Secretary of State's online

1. Complaint at 6, *Mullins v. Cole*, No. 3:16-cv-9918 (S.D. W. Va. Oct. 20, 2016), D.E. 1.

2. *Mullins v. Cole*, ___ F. Supp. 3d ___, ___, 2016 WL 6871263 (S.D. W. Va. 2016) (p.2 of opinion filed at S.D. W. Va. No. 3:16-cv-9918, D.E. 18).

3. Complaint, *supra* note 1; *Mullins*, ___ F. Supp. 3d at ___, 2016 WL 6871263 (p.1 of opinion filed at S.D. W. Va. No. 3:16-cv-9918, D.E. 18); *see* Kate White, *ACLU Files Suit Over Cabell Voter Registration*, Charleston Gazette-Mail, Oct. 21, 2016, at 1C.

4. Temporary Restraining Order Motion, *Mullins*, No. 3:16-cv-9918 (S.D. W. Va. Oct. 20, 2016), D.E. 3; *Mullins*, ___ F. Supp. 3d at ___, 2016 WL 6871263 (p.1 of opinion filed at S.D. W. Va. No. 3:16-cv-9918, D.E. 18).

5. Order, *Mullins*, No. 3:16-cv-9918 (S.D. W. Va. Oct. 21, 2016), D.E. 7; *Mullins*, ___ F. Supp. 3d at ___, 2016 WL 6871263 (p.1 of opinion filed at S.D. W. Va. No. 3:16-cv-9918, D.E. 18); *see* Minutes, *Mullins*, No. 3:16-cv-9918 (S.D. W. Va. Oct. 25, 2016), D.E. 16; *see also* Judge Sets Hearing for Case Against Cabell Clerk, Charleston Gazette-Mail, Oct. 22, 2016, at 8A; Kate White, *Clerk's Lawyer Replies to Voter Suit*, Charleston Gazette-Mail, Oct. 25, 2016, at 1C.

6. *Mullins*, ___ F. Supp. 3d at ___, 2016 WL 6871263 (p.5 of opinion filed at S.D. W. Va. No. 3:16-cv-9918, D.E. 18).

7. Preliminary Injunction, *Mullins*, No. 3:16-cv-9918 (S.D. W. Va. Oct. 25, 2016), D.E. 17; *Mullins*, ___ F. Supp. 3d at ___, 2016 WL 6871263 (p.1 of opinion filed at S.D. W. Va. No. 3:16-cv-9918, D.E. 18); *see* Cabell Clerk Ordered to Honor Online Voter Registrations, Charleston Gazette-Mail, Oct. 26, 2016, at 1C.

voter registration system to register to vote in Cabell County as members of the class.”⁸

Judge Chambers issued his opinion on November 21.⁹ “The constitution prohibits people from being classified in such a way that it unnecessarily abridges the right to vote.”¹⁰ Judge Chambers found the county clerk’s preference for paper applications over electronic ones insufficient to justify disparate treatment.¹¹

8. Preliminary Injunction, *supra* note 7, at 1.

9. *Mullins*, ___ F. Supp. 3d ___, 2016 WL 6871263 (opinion filed at S.D. W. Va. No. 3:16-cv-9918, D.E. 18).

10. *Id.* at ___ (p.6 of filed opinion).

11. *Id.* at ___ (pp.8-12 of filed opinion).