

Voting in a Primary Election at Seventeen If Eighteen by the General Election

Smith v. Husted

(*George C. Smith, S.D. Ohio 2:16-cv-212*)

On March 8, 2016, one week in advance of a presidential primary election, six mothers of minor voters and the Bernie Sanders presidential campaign filed a federal complaint in the Southern District of Ohio challenging “a new interpretation of the Threshold Voter Law [which allows 17-year-olds to vote in primary elections if the voters will be 18 at the time of the general election], stating that, ‘In presidential primary elections, a 17-year-old voter is not permitted to vote for presidential delegates, because delegates are elected and not nominated.’”¹ That day, Judge George C. Smith set the case for a conference call on March 9.²

At the conference, Judge Smith and the parties agreed to expedited briefing to be concluded by March 11 followed by a ruling without oral argument.³ The plaintiffs filed a motion for a temporary restraining order and a preliminary injunction on March 10.⁴

On March 11, Judge Smith decided to abstain from ruling on the injunction motion because of pending litigation on the same question in state court.⁵ Judge Smith rejected the argument by Ohio’s secretary of state that the federal action should be barred by laches; the secretary’s argument that the injunction would prejudice threshold voters whose presidential primary votes had already been rejected was not prejudice against the *defendant*.⁶ Following relief granted the plaintiffs in state court,⁷ they voluntarily dismissed their federal case.⁸

1. Docket Sheet, *Smith v. Husted*, No. 2:16-cv-212 (S.D. Ohio Mar. 8, 2016) (D.E. 1); Redacted Complaint, *id.* (Mar. 10, 2016), D.E. 10 (redacting minors’ birthdays); see Ohio Rev. Code § 3503.011; see also William T. Perkins, *Suits Fight for 17-Year-Old Voters*, Columbus Dispatch, Mar. 9, 2016, at 1B.

2. Order, *Smith*, No. 2:16-cv-212 (S.D. Ohio Mar. 8, 2016), D.E. 3.

3. Order, *id.* (Mar. 9, 2016), D.E. 6.

4. Motion, *id.* (Mar. 10, 2016), D.E. 8.

5. Abstention Opinion, *id.* (Mar. 11, 2016), D.E. 14; see Complaint, *Schwerdtfeger v. Husted*, No. 16-cv-2346 (Franklin Cty. Ct. Common Pleas Mar. 8, 2016), fcdcfcs.co.franklin.oh.us/CaseInformationOnline/Welcome.jsp; see also Lynn Hulse, *Group Sues Ohio Over Voting Age*, Dayton Daily News, Mar. 9, 2016, at B2; Doug Livingston, *Young Voters Denied at Primary*, Akron Beacon J., Mar. 10, 2016, at A1; Ann Sanner, *Judge Hears Dispute Involving Ohio’s Youngest Primary Voters*, Cincinnati Enquirer, Mar. 11, 2016, at A5.

6. Abstention Opinion, *supra* note 5, at 6–9.

7. Opinion, *Schwerdtfeger*, No. 16-cv-2346 (Franklin Cty. Ct. Common Pleas Mar. 11, 2016); see William T. Perkins, *Judge Oks Vote for Those Who Are 17*, Columbus Dispatch, Mar. 12, 2016, at 1B.

8. Notice, *Smith*, No. 2:16-cv-212 (S.D. Ohio Apr. 29, 2016), D.E. 15.