

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 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

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*, 218 F. Supp. 3d 488, 490 (S.D. W. Va. 2016).

3. Complaint, *supra* note 1; *Mullins*, 218 F. Supp. 3d at 489; 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. Oct. 20, 2016), D.E. 3; *Mullins*, 218 F. Supp. 3d at 489.

5. Order, *Mullins*, No. 3:16-cv-9918 (S.D. W. Oct. 21, 2016), D.E. 7; *Mullins*, 218 F. Supp. 3d at 489; see Minutes, *Mullins*, No. 3:16-cv-9918 (S.D. W. 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*, 218 F. Supp. 3d at 491.

7. Preliminary Injunction, *Mullins*, No. 3:16-cv-9918 (S.D. W. Va. Oct. 25, 2016), D.E. 17; *Mullins*, 218 F. Supp. 3d at 489–90; see *Cabell Clerk Ordered to Honor Online Voter Registrations*, Charleston Gazette-Mail, Oct. 26, 2016, at 1C.

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

9. *Mullins*, 218 F. Supp. 3d 488.

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

An award of attorney fees and costs was resolved by settlement.¹²

10. *Id.* at 492.

11. *Id.* at 493–95.

12. Order, *Mullins*, No. 3:16-cv-9918 (S.D. W. Va. Mar. 15, 2017), D.E. 30.