

## 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)*

A district judge determined that a county clerk's refusal to accept online voter registrations from the state's website violated equal protection. The judge issued a preliminary injunction five days after the complaint was filed.

*Subject:* Registration procedures. *Topics:* Registration procedures; equal protection; class action; student registration; attorney fees.

According to a federal class-action complaint filed on Thursday, October 20, 2016, in the Southern District of West Virginia's Huntington courthouse,

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.<sup>1</sup>

"Of the fifty-five counties in West Virginia, all but Cabell County allow residents to register using the online system."<sup>2</sup> With her complaint, the plaintiff filed a motion for a temporary restraining order.<sup>3</sup>

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.<sup>4</sup> "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."<sup>5</sup>

At the hearing, Judge Chambers granted the plaintiff a preliminary injunction, with an opinion to follow.<sup>6</sup> 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; *see Mullins v. Cole*, 218 F. Supp. 3d 488, 489 (S.D. W. Va. 2016); *see also* Kate White, *ACLU Files Suit Over Cabell Voter Registration*, *Charleston Gazette-Mail*, Oct. 21, 2016, at 1C.

2. *Mullins*, 218 F. Supp. 3d at 490.

3. Temporary-Restraining-Order Motion, *Mullins*, No. 3:16-cv-9918 (S.D. W. Va. Oct. 20, 2016), D.E. 3; *Mullins*, 218 F. Supp. 3d at 489.

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

5. *Mullins*, 218 F. Supp. 3d at 491.

6. 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.

voter registration system to register to vote in Cabell County as members of the class.”<sup>7</sup>

Judge Chambers issued his opinion on November 21.<sup>8</sup> “The constitution prohibits people from being classified in such a way that it unnecessarily abridges the right to vote.”<sup>9</sup> He found the county clerk’s preference for paper applications over electronic ones insufficient to justify disparate treatment.<sup>10</sup>

An award of attorney fees and costs was resolved by settlement.<sup>11</sup>

---

7. Preliminary Injunction, *supra* note 6, at 1.

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

9. *Id.* at 492.

10. *Id.* at 493–95.

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