

## 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)*

A federal complaint challenged a state secretary of state's advisory that a law permitting seventeen-year-olds to vote in a primary election if they will be eighteen by the time of the general election did not apply to a presidential primary election because voters in the state's presidential primary election are not voting for a nomination but are voting for delegates to a convention. The federal judge abstained from a ruling on the merits because of pending state litigation over interpretation of the relevant statute. The state court ruled in favor of the federal plaintiffs' position.

*Subject:* Voting procedures. *Topics:* Primary election; matters for state courts; laches.

On March 8, 2016, one week before 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.’”<sup>1</sup> That day, Judge George C. Smith set the case for a conference call on March 9.<sup>2</sup>

At the conference, Judge Smith and the parties agreed that expedited briefing would conclude by March 11 and be followed by a ruling without oral argument.<sup>3</sup> The plaintiffs filed a motion for a temporary restraining order and a preliminary injunction on March 10.<sup>4</sup>

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.<sup>5</sup>

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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.

Judge Smith died on April 15, 2020. Federal Judicial Center Biographical Directory of Article III Federal Judges, [www.fjc.gov/history/judges](http://www.fjc.gov/history/judges).

3. Order, *Smith*, No. 2:16-cv-212 (S.D. Ohio 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 (Ohio Ct. Common Pleas Franklin Cty. Mar. 8, 2016), [fcdcfcs.co.franklin.oh.us/CaseInformationOnline/imageLinkProcessor.pdf?coords=vIHVxmLC4Uo1NVdyBdD4Ahdmyf%2BSifV9VogpVV7dH%2FaV%2FJ%2B7bZwqiiK9GtM36UnvwUP5zWCuGLt13u3OUmV9FUw%2B70lKMceUsnTPsDpE3%2FM4MJOZfZWttf73BcInnm7er%2FLb3GrY28QXkY56yG68vHhzGbvW%2Bql7%2BCuhtJUQGog%3D](http://fcdcfcs.co.franklin.oh.us/CaseInformationOnline/imageLinkProcessor.pdf?coords=vIHVxmLC4Uo1NVdyBdD4Ahdmyf%2BSifV9VogpVV7dH%2FaV%2FJ%2B7bZwqiiK9GtM36UnvwUP5zWCuGLt13u3OUmV9FUw%2B70lKMceUsnTPsDpE3%2FM4MJOZfZWttf73BcInnm7er%2FLb3GrY28QXkY56yG68vHhzGbvW%2Bql7%2BCuhtJUQGog%3D); see also Lynn Hulsey, *Group Sues Ohio Over Voting Age*, Dayton Daily News, Mar. 9, 2016, at B2; Doug Livingston, *Young Voters Denied*

He 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*.<sup>6</sup> Following relief granted the plaintiffs in state court,<sup>7</sup> they voluntarily dismissed their federal case.<sup>8</sup>

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*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), [fcdcfjs.co.franklin.oh.us/CaseInformationOnline/imageLinkProcessor.pdf?coords=plUUQyLO8l5cKGXEU6qmzlfA6YzYwEs8XFCJprYNmOMeiCSFEVV%2B4RIAP9nBnXbAY6H4MtFi41tXqM6SehFujxkpPBFxOYwgrG7JA%2FRyOxpZg7Rr48FysmOGy0MfHbmqp3F%2FjaVQ0m0Fno6GqllFyhBYkUI9bjXLRuOgrvHNEIc%3D](https://www.fcdcfjs.co.franklin.oh.us/CaseInformationOnline/imageLinkProcessor.pdf?coords=plUUQyLO8l5cKGXEU6qmzlfA6YzYwEs8XFCJprYNmOMeiCSFEVV%2B4RIAP9nBnXbAY6H4MtFi41tXqM6SehFujxkpPBFxOYwgrG7JA%2FRyOxpZg7Rr48FysmOGy0MfHbmqp3F%2FjaVQ0m0Fno6GqllFyhBYkUI9bjXLRuOgrvHNEIc%3D); 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.