



2016 polling place order vacated

September 13, 2016

Shortly before polls were to close during the 2016 Ohio primary election, an anonymous caller telephoned the clerk of the U.S. Southern District of Ohio to complain about an accident in the Cincinnati area that might make it difficult for voters to reach the polls. The clerk's office relayed the message to a district court judge who had already left the office for the evening. The judge accepted the anonymous "oral complaint" and ordered polling places in four Ohio counties to remain open for an additional hour.

Two minutes before polls were scheduled to close, the order was verbally delivered to the Secretary of State's Office via a 43-second voicemail message left on the assistant secretary's cell phone. By 7:31 p.m., when the voicemail was retrieved and reviewed, polls had closed. The secretary of state and local election officials then scrambled to comply with the oral order and, with mixed results, reopened the polling locations in the area.

The secretary and two boards of elections later appealed, seeking clarification from the Sixth District Court of Appeals about the district court's authority to issue an order of this nature. In a 2-1 decision, [the Sixth District Court of Appeals agreed](#) with the secretary and boards of elections to reverse the district court's order. To invoke the federal courts' jurisdiction over the secretary of state, the boards of elections or any potential defendants, a complaint must demonstrate "standing." The appellate court concluded that plaintiff-less complaints were not permitted and that, at a minimum, the district court needed four identified plaintiffs who suffered concrete and redressable harm because they could not vote that evening. Otherwise, the district court had no jurisdiction to issue the order.

Chief Judge Guy Cole dissented, finding that the case was moot. Because the primary election was over, and the district court's order expired by its own terms, Judge Cole would have remanded the case to the district court for dismissal. Judge Cole expressed no opinion on the issue of standing.

The appellate court recognized that the district court judge "was in a difficult spot. She was out of the office. It was late. She had little time to act. All of this presumably led her to err on the side of protecting people's right to vote." However, the appellate



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court ruled, “none of this allowed the court to sidestep the Article III limitations on our power.”