

FAQs on *Husted v. A. Phillip Randolph Institute*

What's at issue in *Husted v. APRI*?

On January 10, 2018, the Supreme Court will hear oral arguments in a case about state practices regarding voter registration maintenance. Ohio elections officials place “non-voters”—or individuals who miss just one federal election—on an “inactive” list. Officials then send “confirmation” notices to each of the individuals on the “inactive” list. Individuals who respond to the notice and alert county officials that they still live at the listed address will remain on the state’s voter registration list; individuals who don’t respond to the notice, for whatever reason, will be removed. At issue in *Husted* is whether Ohio’s practice violates Section 8 of the National Voter Registration Act (NVRA), which prohibits implementation of any voter registration list-maintenance program that “results in the removal of the name of any person ... by reason of the person’s failure to vote.” This matters because registration, in all states but one (North Dakota), is a pre-requisite to voting. If you’re not registered before casting your ballot, your vote won’t count.

What's the National Voter Registration Act? Why was it passed?

Unlike most other established democracies, the United States hasn’t solved its registration and voter turnout deficiencies, many of which reflect racial and economic disparities in our system. With the aim of reducing these divisions and enhancing turnout, Congress passed the National Voter Registration Act in 1993. Members found that “discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation ... and disproportionately harm voter participation by various groups, including racial minorities.” The NVRA’s overall aims, declared upfront, were to “increase the number of eligible citizens who can register to vote,” “enhance[] the participation of eligible citizens as voters in elections for Federal office,” and “ensure that accurate and current voter registration rolls are maintained.”

The bulk of the law specifies how states are to provide voter registration opportunities: through a mail-in voter registration application, during transactions at departments of motor vehicles, and at designated voter registration agencies, including all state offices providing public assistance and state-funded disabilities services. An additional section—known as “section 8”—specifies how states should administer voter registration lists, with clear instructions on steps to be taken before an individual can be deemed no longer eligible to vote at his/her earlier stated address and removed from the registration rolls. These instructions aside, the main thrust of the NVRA is to get eligible citizens registered and to keep them registered: “[O]ne of the guiding principles of this legislation [is] to ensure that once registered, a voter remains on the rolls so long as he or she is eligible to vote in that jurisdiction.”

What happens if an individual's name is removed from the voter registration list?

It depends on the state. In Ohio, if your name is removed from the voter registration list, and you don't realize it until after the voter registration deadline—30 days before an election—then you won't be able to cast a ballot that will be counted. In other states that have same-day or election-day registration in place—CA, CO, CT, HI, ID, IL, IA, ME, MD, MN, MT, NH, NC, WI, WY, DC—any eligible voter may re-register if, for whatever reason, his or her voter registration has been removed from the records.

So, what's the answer? Is Ohio's practice illegal?

Yes, the practice is illegal. The NVRA, above all, aims to ensure that eligible citizens get registered—and that they stay registered unless they become ineligible either to vote or to vote from their last registered address. To further that aim, the law sets limits on the state's removal of registrants' names from the rolls; it specifies that registrants may only be removed from the rolls for five specific reasons: (1) at the individual's request; (2) by reason of criminal conviction; (3) by reason of mental incapacity; (4) by reason of death; or (5) by reason of a change in residence. Failure to vote doesn't count as one of the five reasons for removal, and it in no way indicates that an individual recently moved. After all, citizens give numerous reasons for missing elections, including insufficient time to vote and disinterest in the candidates.

And just to be clear, a separate provision of the NVRA explicitly prohibits states from implementing registration maintenance programs that “result in the removal of the name of any person ... by reason of the person's failure to vote.” Ohio's program very clearly violates this prohibition, as it targets individuals precisely because they have missed a federal election.

Do other states engage in this same registration removal practice?

Yes, but they're in the minority. Only a handful of other states—GA, OK, OR, PA, and WV—target “non-voters” for removal from the registration rolls, and none aside from Ohio initiates the purge process against a voter following just one missed election.

The individual can avoid being removed from the registration roll if he/she contacts the election official. So, what's the big deal?

There are lots of reasons why an individual may not return a confirmation notice mailed to him/her by an election official. Government mail increasingly looks like junk mail, so an individual could mistake the confirmation notice for a pesky solicitation and trash it. In some parts of the country, too, mail delivery isn't reliably uniform; this is especially true of rural and lower-income areas. Regardless of why one doesn't respond to a notice, the fact remains that the state, under federal law, is prohibited from targeting individuals for removal from the registration rolls because they failed to vote. That's the real issue in this case.

What will the U.S. Supreme Court do?

It's hard to know, but plaintiffs/respondents in the case present a convincing argument that Ohio's purging process is illegal. The text of the law itself clearly prohibits removals from the registration rolls for voter inactivity, so the Justices need look no further than the NVRA's language (and that of the Help American Vote Act, which confirmed the NVRA's prohibition). Unfortunately, the Supreme Court does not broadcast oral argument, so only those who secure the few limited seats in the courtroom available will hear it in real time. But advocates and reporters will quickly report on the proceedings, and the transcript of oral argument will be available later in the day on January 10th. Audio will be released later that week. Oral argument can *sometimes* provide a good indication as to how the Court will decide, but we won't know anything definitive until it releases its decision.

Who will be impacted by the Court's decision?

If the Court rules in favor of Ohio Secretary of State Husted, other states may potentially take on the same practice of targeting "non-voters" for removal from the registration rolls. Hundreds of thousands, perhaps millions, of voter registration records could be removed from states' rolls, requiring individuals to take measures to ensure they get re-registered. Here are some groups likely to be most impacted:

- Lower-income and working-class Americans, including people of color disproportionately, would be impacted because those with fewer resources are less likely to vote every cycle. Thus, they're more likely to be impacted by a program that targets non-voters for removal.
- Disabled and older citizens, due to barriers at polling places, vote at lower rates than able-bodied and younger citizens. As a result, they also stand to be targeted at higher rates by "non-voter" purging programs.
- Limited-English proficient persons, including Latinos and Asian-Americans, are less likely to respond to confirmation notices if they're written in English only and, thus, likelier to be removed from the rolls under programs like Ohio's.
- Servicemen and women, who routinely find themselves far from home on Election Day, vote less as well and are less likely to respond to confirmation notices.
- And minor-party voters, such as Libertarians, are less likely to show up at the polls if their candidates aren't on the ballot, so they're likely to be cut from the rolls under programs like Ohio's.

I've missed an election or two. Is my voter registration still active?

It depends on where you live. Regardless, it's always best to check the status of your voter registration well before your state's voter registration deadline passes. That way, if there's a problem, you can remedy it in time for the next election. You can check your status here: <https://www.headcount.org/verify-voter-registration/>

What if I want to know more about this case?

Scotusblog.com posts all filings for *Husted v. A.P.R.I.*: <http://www.scotusblog.com/case-files/cases/husted-v-philip-randolph-institute/>. Also, stay tuned to the [ACS blog](#) for more updates on this important case.