

Closely Divided Court Upholds Ohio Law Maintaining Voter Rolls

11 Jun 2018

Under Ohio law, when a voter fails to vote for two years, the state sends the nonvoter a postage prepaid return card to verify his or her address. Voters who do not return the card and do not vote in any election for four more years are then presumed to have moved and are removed from the voting rolls. In *Husted v. A. Philip Randolph Institute*, Ohio's law was challenged under the National Voter Registration Act, which forbids removal of a voter from the rolls solely for failing to vote, while allowing certain procedures, including the return cards, to identify voters who can be taken off the rolls because they no longer have the residency requirement (i.e. have moved). The district court upheld the law, but the Sixth Circuit reversed because the return card was sent because of a failure to vote, implicating the Act's prohibition. The Court, in a 5-4 opinion by Justice Alito, reversed, holding that Ohio's law followed the requirements of the Act "to the letter." The majority further noted that the Act only precluded removal from the rolls based "solely" on failure to vote, and did not prohibit the sending of the return card on that basis, since the card in itself did not remove any voter from the rolls. Justice Thomas filed a concurrence, arguing that the dissent's interpretation of the Act would unnecessarily raise constitutional concerns over State authority to determine voter qualifications. Justice Breyer, joined by Justices Ginsburg, Sotomayor, and Kagan, dissented, arguing that a voter's failure to return a card verifying his or her address does not materially support the inference that the voter lacks residency to vote, and the Act should be read to prohibit a state from using a voter's failure to vote to initiate the sending of that card. Justice Sotomayor filed a separate dissent to note that the Act was meant to protect minorities from being scrubbed from the rolls, and her view that Ohio's law was the type of "purge system that the [Act] was designed to prevent." A link to the opinion is [here](#).

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TAGGED: Voter Rolls, Husted v. A. Philip Randolph Institute, National Voter Registration Act