U.S. Supreme Court Jeopardizes Voters’ Rights by Approving Ohio Voter Purge Process

In a decision that could jeopardize the voting rights of millions, the U.S. Supreme Court today ruled that states may disenfranchise eligible voters solely for voting infrequently and failing to respond to a single mailing. The decision comes in Husted v. A. Phillip Randolph Institute, a challenge to Ohio’s illegal voter purge process in which the NAACP Legal Defense Fund (LDF) filed an amicus brief with the Leadership Conference on Civil & Human Rights and the law firm, Orrick, Herrington & Sutcliffe, LLP.

“Today’s decision is an insult to our democracy,” said Samuel Spital, LDF’s Director of Litigation. “Federal law makes clear that no voter should be purged from a state’s voter rolls unless there is reliable evidence that the voter has moved or is otherwise ineligible to vote. Ohio’s voter purge process is flatly inconsistent with that rule. By failing to recognize as much, the Supreme Court’s decision allows state and local governments to undermine the democratic process by making it far more difficult for people to vote.”

The National Voter Registration Act of 1993 (NVRA) and the Help America Vote Act of 2002 (HAVA)—both enacted by Congress to expand access to the political process—prohibit state and local governments from removing voters from voting rolls based solely on the fact that a person has not voted.

But under Ohio’s “Supplemental Process,” failure to vote for two years prompted the state to begin the process of purging voters from Ohio’s registration rolls. Unless affirmative steps were taken by a voter to confirm their voter status, and voters participated in elections within a four-year period, the person was removed from the state’s voter rolls. In 2015 alone, more than 40,000 voters were purged from Cuyahoga County, Ohio, which has a significant racial minority population, creating an additional barrier for people of color and other individuals to exercise their right to vote.

In September 2017, LDF filed an amicus brief urging the Supreme Court to rule that the NVRA and HAVA prohibit Ohio’s voter purge process. While championing LDF’s nearly 80-year efforts to remove barriers to Black political exclusion and create opportunities to vote, LDF’s brief also explained the structural and other legitimate reasons why voters,
including armed forces members, may choose not to vote and should not be purged from the rolls solely for that choice.

LDF’s brief also underscored the unprincipled decision of the U.S. Department of Justice’s to reverse its longstanding position that the NVRA and HAVA outlaw Ohio’s purge tactics, a position that the Department of Justice defended when this case was presented in the lower courts. The about-face occurred weeks after the appointment of Attorney General Jeff Sessions.

“This dangerous ruling defies the position that the U.S. Department of Justice previously supported for two decades before this administration took office – that it is crucial to uphold the letter and spirit of existing federal laws like the NVRA and HAVA that expand rather than limit opportunities to access the right to vote,” said Leah Aden, LDF’s Senior Counsel. “LDF will continue to fight to expand access to the ballot and create a robust democracy.”

As Justice Sotomayor explained in her dissenting opinion, “Congress enacted the NVRA against the backdrop of substantial efforts by States to disenfranchise low-income and minority voters, including programs that purged eligible voters from registration lists because they failed to vote in prior elections.” The majority of the Court “errs in ignoring this history and distorting the statutory text to arrive at a conclusion that not only is contrary to the plain language of the NVRA but also contradicts the essential purposes of the statute, ultimately sanctioning the very purging that Congress expressly sought to protect against.”

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Founded in 1940, the NAACP Legal Defense and Educational Fund, Inc. (LDF) is the nation’s first civil and human rights law organization and has been completely separate from the National Association for the Advancement of Colored People (NAACP) since 1957—although LDF was originally founded by the NAACP and shares its commitment to equal rights. LDF’s Thurgood Marshall Institute is a multi-disciplinary and collaborative hub within LDF that launches targeted campaigns and undertakes innovative research to shape the civil rights narrative. In media attributions, please refer to us as the NAACP Legal Defense Fund or LDF.