



August 18, 2017

The U.S. Commission on Civil Rights Raises Concern about Reversal of Department of Justice Position in Key Voting Rights Case

The U.S. Commission on Civil Rights, by majority vote, expresses serious concern with the Department of Justice's recent change of position in *Husted v. A. Philip Randolph Institute*, an Ohio voting rights case scheduled to be argued before the Supreme Court during its upcoming October Term.¹ Section 8 of the National Voter Registration Act (NVRA) prescribes rules for when state voter registration maintenance programs may remove voters from voter rolls, and explicitly prohibits the removal of an eligible voter because of a person's failure to vote.² Since 1994, the Department has argued the NVRA prohibited states from using a voter's failure to vote for a specified period as grounds to send an address-verification notice.³ Under programs like Ohio's, if the voter failed to respond to the notice and failed to vote for an additional period of time, the voter would be removed from the voter roll.⁴

Although no facts or case law have changed, the Department has now reversed its position, citing "the change in Administrations" as the only basis for doing so.⁵ This stance opens the door to more aggressive and inaccurate purging of voter rolls, which can lead to widespread voter disenfranchisement and suppression of low income communities and communities of color.⁶ In September 2016, a federal appeals court blocked the Ohio program for violating Section 8.⁷ A federal judge allowed purged voters who still lived in the same county to vote provisionally.⁸ The State of Ohio has acknowledged that over 7,500 voters cast votes in the 2016 presidential election that would have otherwise been purged from the voting rolls.⁹

¹ Brief for the United States as *Amicus Curiae* Supporting Petitioner, *Husted v. A. Philip Randolph Institute*, No. 16-980 (U.S. Aug. 7, 2017), available at https://www.justice.gov/sites/default/files/briefs/2017/08/07/16-980_husted_v_randolph_institute_ac_merits.pdf [hereinafter August 2017 Brief for the United States].

² 52 U.S.C. §20507(b)(2).

³ Brief for the United States as *Amicus Curiae* Supporting Plaintiffs-Appellants and Urging Reversal at 2-3, *A. Philip Randolph Institute v. Husted*, No. 16-3746 (6th Cir. July 18, 2016), available at <https://www.justice.gov/crt/file/881821/download> (listing documents dating back to 1994 supporting the Department's then-position on Section 8).

⁴ August 2017 Brief for the United States at 13.

⁵ *Id.* at 14.

⁶ Myrna Perez, The Brennan Center, *Voter Purges* 10-12 (2008), available at <https://www.brennancenter.org/sites/default/files/legacy/publications/Voter.Purges.f.pdf> (discussing unreliability of using mail to confirm voter eligibility in poor and minority communities).

⁷ *A. Philip Randolph Institute v. Husted*, 838 F.3d 699 (6th Cir 2016).

⁸ *A. Philip Randolph Institute v. Husted*, No. 2:16-CV-303, 2016 WL 6093374 (S.D. Ohio Oct. 19, 2016).

⁹ Tom Troy, 7,500 Reinstated Voters Showed Up for Election, Toledo Blade (Feb. 4, 2017), <http://www.toledoblade.com/Politics/2017/02/04/7-500-reinstated-voters-showed-up-for-election.html>.

This case marks the second high-profile voting rights case where the Department has reversed or withdrawn its position from earlier briefs.¹⁰ The Commission will continue to monitor the actions of the Administration as part of its previously-announced two-year assessment of federal civil rights enforcement, which will conclude in Fiscal Year 2019.

Chair Catherine E. Lhamon stated: “The right to vote is fundamental in our American democracy. The Commission will continue to uphold its 60-year mandate to protect that right and remains vigilant in ensuring the Department of Justice fulfills its own mandate of enforcing federal civil rights statutes.”

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The U.S. Commission on Civil Rights is an independent, bipartisan agency charged with advising the President and Congress on civil rights matters and issuing an annual federal civil rights enforcement report. For information about the Commission, please visit <http://www.usccr.gov> and follow us on [Twitter](#) and [Facebook](#).

¹⁰ See Order on Government’s Motion for Voluntary Dismissal of Discriminator Purpose Claim and Assertion of Mootness, *Veasey v. Abbott*, No. 2:13-CV-193 (Apr. 3, 2017) (granting DOJ motion to dismiss intentional discrimination claim in Texas Voter ID case, now consolidated with *Texas NAACP v. Steen*), available at https://www.brennancenter.org/sites/default/files/legal-work/2017.04.03_Order-Dismissal.pdf.