

Supreme Court Battle Against Ohio's Illegal Voter Purges Draws Support in Eighteen Amicus Briefs

Amicus Briefs Opposing Ohio's Purge Practices Include Former DOJ Officials; State Governments; Ohio Election Administrators; and Many Others

A diverse set of stakeholders filed 18 amicus briefs urging the Supreme Court to strike down Ohio's Supplemental Process—an illegal voter purge practice that removes eligible voters from the rolls for failure to vote, in violation of the National Voter Registration Act of 1993 (NVRA).

Current and Former Government Officials, Including Ohio Officials, Support the Challenge to Ohio's Purge Practices

- A group of **17 former Department of Justice (DOJ)** officials who have served under both Republican and Democratic administrations discusses DOJ's consistent 20-year interpretation of the NVRA to prohibit Ohio's practice of purging for nonvoting. [The brief](#) responds directly to DOJ's abrupt change in interpretation of the law, under the Trump Administration, which in July filed a brief to support Ohio's purge practice now that the case is before the U.S. Supreme Court.
- **Twelve states and the District of Columbia, including states with both Democratic and Republican Secretaries of State**, filed [a brief](#) drawing on their experience administering voter rolls to explain that states have many ways to keep their voter rolls up to date without relying on voter inactivity, as Ohio does. Their brief argues that a purging process triggered by voter inactivity causes disproportionate harm to voters and is a poor proxy for identifying ineligible voters. The states' brief undermines Ohio's justification for its Supplemental Process by identifying alternative methods of legally and effectively maintaining accurate voter rolls.
- **Thirty-six current and former county election officials in Ohio** discuss in their brief the problems associated with Secretary of State Husted's practice of targeting people for purging based on nonvoting. [This brief](#) is particularly important because it comes from local officials in Ohio who must administer Secretary Husted's purge process, and who are best positioned to explain the problems created by targeting people for removal for nonvoting.
- **Senator Sherrod Brown** from Ohio, who helped manage the floor debate on the NVRA as a then-congressman from Ohio, [argues](#) that Ohio's non-voting purge conflicts with the language, structure and purpose of the NVRA.
- **Twenty-seven Members of the Congressional Black Caucus**, including Members of Congress who were in office when the NVRA and the Help America Vote Act (HAVA) were passed, [describe](#) the congressional intent behind the laws and explain why Ohio's voter purge practice violates federal law.

Leading Civil Rights and Voting Rights Organizations Highlight Barriers to Voting that Often Prevent Particular Communities from Voting in Every Election

Several organizations filed briefs discussing barriers to voting faced by different communities, including people of color, individuals with limited English proficiency, hourly and wage workers, veterans and military personnel, housing insecure individuals, persons with disabilities, low-income individuals and others, which are likely to be disproportionately targeted and removed from the rolls under Ohio's Supplemental Process:

- **National Disability Rights Network, Disability Rights Ohio, American Association of Retired Persons, AFL-CIO, SEIU, Democracy Initiative, National Coalition For The Homeless, Columbus Coalition For The Homeless, And Miami Valley Voter Protection** [review](#) the barriers to voting that are faced by individuals with disabilities, hourly/wage workers and seniors.
- **Asian Americans Advancing Justice, LatinoJustice PRLDEF, the National Association of Latino Elected and Appointed Officials and 19 other organizations** [review](#) the barriers to voting that are faced by eligible persons with limited English proficiency, which may prevent such voters from exercising their right to vote.
- **VoteVets Action Fund** discusses the impact voter purges have on the ability of active duty service members and veterans to vote. [The brief](#) explains how these military personnel have the potential for frequent changes to their mailing address, despite maintaining a permanent voting residence, which makes them especially vulnerable to removal through Ohio's purge process. The brief explains that the transient nature of the military lifestyle severely complicates servicemembers' ability to exercise the right to vote, a right which they are often risking their very lives to protect.
- A number of civil engagement groups – **Lawyers' Committee For Civil Rights Under Law, Rock The Vote, The Nuns On The Bus of Ohio, The Texas Civil Rights Project, and The Center For Media And Democracy** – joined [a brief](#) that examines the intent of the NVRA to give disenfranchised populations access to vote – including low-income voters and voters from communities of color.
- **The NAACP and Ohio Conference of the NAACP** [discuss](#) Ohio's non-voting purge in the context of the history of other barriers Ohio has imposed to the right to register and vote, and the disproportionate impact of these vote suppression measures on people of color.

Libertarian Organizations and Other Democracy Organizations Defend the Right Not to Vote in Every Election

- **The National Libertarian Party** [discusses](#) that every American has a First Amendment right not to vote and how removing registrants from the rolls for failure to vote is a violation of that right.

- **The Libertarian Party of Ohio and the Center for Competitive Democracy** submitted [a brief](#) arguing that ballot access laws often prevent third parties from forming and from fielding candidates, which means that voters not affiliated with the two major parties may elect not to vote due to the lack of candidate and party choice. This may make it more likely that such voters will be targeted and purged under Ohio’s Supplemental Process, even though they remain fully eligible to vote.

Leading Legal Experts Discuss the Importance of Preserving the National Voter Registration Act and Its Full Intent.

- **Scholars of American History** filed [a brief](#) reviewing the history of voter purges which led to Congress’ decision to eliminate purging for nonvoting through the NVRA.
- **Constitutional Accountability Center (CAC)** submitted [a brief](#) refuting Ohio’s argument that the doctrine of constitutional avoidance allows the Court to defer to Ohio’s flawed interpretation of the NVRA. CAC’s brief explains why the Constitution’s Elections Clause grants Congress full authority to implement legislation, like the NVRA, that creates a code of conduct for federal elections, including by establishing regulations related to registration.
- **The NAACP Legal Defense and Educational Fund and The Leadership Conference on Civil and Human Rights** discusses the fact that the DOJ recently switched from opposing Ohio’s voter purge practice to defending it with little explanation. [The brief](#) explains that the Supreme Court should be skeptical of the reversal in this case, particularly given the length of time the DOJ opposed purge practices like Ohio’s. The brief also situates this case into the larger national campaign by certain interests to purge voters from the voting rolls.
- **Public Citizen** filed [a brief](#) addressing the specific canons of statutory construction at issue in the case, and responding in particular to the Solicitor General’s arguments regarding how to construe the NVRA. The brief argues that the Solicitor General’s construction of Section 8 of the NVRA fails to give effect to all parts of the statute and cannot be squared with the plain meaning of the statute nor with governing interpretive principles of statutory construction.
- **Common Cause of Georgia** filed [a brief](#) describing how Georgia’s voter purge practice, which is similar to Ohio’s, is currently being challenged in a separate lawsuit for violating the NVRA— *Common Cause v. Kemp*. This brief highlights the very real national implications of *Husted v. APRI* for states that employ purge practices similar to Ohio’s.
- **The League of Women Voters of the United States, the League of Women Voters of Ohio, and the Brennan Center for Justice** submitted [a brief](#) examining how the NVRA was designed to stop states from using unreasonable inferences that a registered voter had become ineligible and noting that only a handful of other states use failure to vote

to initiate a removal process, explaining that Ohio’s process—which uses a mere two years of inactivity to initiate a removal procedure—is the most draconian.

About the Case: *Husted v. A. Philip Randolph Institute (APRI)*

Ohio’s Supplemental Process targets voters who fail to vote in a two-year period for eventual removal from the voter roll — even if they have not moved and are still fully eligible to vote.

The U.S. Court of Appeals for the Sixth Circuit struck down Ohio’s controversial purge of infrequent voters from its voter rolls, finding that Ohio’s Supplemental Process violates the NVRA’s prohibition on removing voters from the rolls by reason of a voter’s failure to vote.

As a result of the Sixth Circuit’s ruling, the federal district court entered an injunction for the November 2016 presidential election that ultimately allowed more than 7,500 Ohio voters to cast a ballot. All of these were eligible voters who would have been denied their right to vote under Ohio’s unlawful process, if the Sixth Circuit had not enjoined Ohio’s improper practices.

In February 2017, Secretary Husted requested that the U.S. Supreme Court review and overturn the Sixth Circuit’s decision. The Supreme Court agreed to hear the case in May and has set oral argument for November 8.