

U.S. Supreme Court acts on two significant Ohio cases

July 6, 2017

The U.S. Supreme Court recently took action in two significant Ohio cases, accepting a challenge to Ohio's method of maintaining voter registration records and refusing to hear a second case related to Ohio's voter identification law.

In the first matter, the Court granted certiorari on May 30, 2017, to hear a case involving Ohio's process of maintaining accurate voter registrations. The case involves two federal voting statutes, the National Voter Registration Act of 1993 (NVRA) and the Help America Vote Act (HAVA), both of which were enacted to regulate state voting procedures. Ohio has a process for removing ineligible voters if they: (1) do not return a confirmation notice sent to a voter for updating his or her registration, and (2) they do not vote during a period of four consecutive years that includes two federal elections.

Plaintiffs sued the Ohio Secretary of State challenging the legality of Ohio's process for removing voters from its rolls. Included in this challenge was the assertion that the Ohio Secretary of State's amended confirmation form sent to confirm residence did not include the proper information for out-of-state registration, therefore, allegedly violating the NVRA. The U.S. District Court for the Southern District of Ohio denied the plaintiffs' motion for summary judgment and ruled in favor of the Secretary of State.

On appeal, the Sixth Circuit Court of Appeals relied heavily on two sections of the NVRA that outline prohibited removal procedures for state voting laws and include specific exceptions.¹ The Sixth Circuit found that Ohio's process violated the NVRA, because the trigger for sending voters a confirmation form was their failure to vote. Additionally, the Sixth Circuit held that the Secretary of State's new confirmation notice form inadequately informed citizens who moved out of their registered district of the procedures required to re-register in their new state or county.

The U.S. Supreme Court accepted the case to consider the Sixth Circuit's determination that using Ohio voter inactivity as a trigger for its process violates the NVRA and HAVA.

In the second matter, the U.S. Supreme Court denied certiorari on June 19, 2017, in *Northeast Ohio Coalition for the Homeless v. Husted*, 837 F.3d 612 (6th Cir. 2016), a case involving Ohio absentee and provisional voting identification procedures. Two organizations representing Ohio's homeless populations brought suit against Ohio's Secretary of State and the State of Ohio to enjoin enforcement of new voting identification requirements passed in 2014 through Senate Bills 205 and 216 (S.B. 205 and S.B. 216).

Prior to the passage of S.B. 205, Ohio law required absentee ballots to be accompanied by an identification envelope containing the voter's name, signature, voting residence and birthdate. If a ballot was rejected, the voter was able to cure the errors within 10 days post-election to have his or her vote counted. S.B. 205 added a requirement for identification envelopes to also include birthdate and address fields. Additionally, S.B. 205 reduced the cure period for inaccuracies to seven days and prohibited election officials from providing certain types of assistance.

Ohio law also allows voters who declare that they are registered but their names do not appear on their district's registration list to cast a provisional ballot. Provisional voting requires showing valid identification and filing an affirmation form with the voter's name, signature and a statement of eligibility. S.B. 216 amended these requirements, adding birthdate and address to the list of affirmation-form fields that must be accurately completed. Prior to S.B. 216, a voter without valid identification would have 10

days to cure this problem. S.B. 216 limited this timeframe to seven days after Election Day.

Attempting to enjoin enforcement of these two bills, the plaintiffs asserted 10 claims, including violations of due process, undue burden and disparate impact to minority voters. The district court dismissed most of the plaintiffs' arguments but favored their undue burden and vote denial claims, finding the increased identification requirements and shorter cure periods of S.B. 205 and S.B. 216 improper. The district court also found the provisions requiring technical precision for birthdates and addresses to disparately affect minority voters.

The Sixth Circuit Court of Appeals upheld the lower court's decision prohibiting enforcement of the additional birthdate and address requirements for absentee identification envelopes. However, it overturned the finding that the other provisions of S.B. 205 and S.B. 216 create an undue burden or disparately affect minority voters.

The plaintiffs appealed a portion of the ruling to the U.S. Supreme Court, which refused to accept the case for hearing. As a result, the Sixth Circuit Court decision stands, effectively ending the "S.B. 205 vs. S.B. 216" challenge.

¹ See, *A. Philip Randolph Inst. v. Husted*, 838 F.3d 699 (6th Cir. 2016).

Authors
