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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

HUSTED, OHIO SECRETARY OF STATE *v.* A. PHILIP RANDOLPH INSTITUTE ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 16–980. Argued January 10, 2018—Decided June 11, 2018

The National Voter Registration Act (NVRA) addresses the removal of ineligible voters from state voting rolls, 52 U. S. C. §20501(b), including those who are ineligible "by reason of" a change in residence, §20507(a)(4). The Act prescribes requirements that a State must meet in order to remove a name on change-of-residence grounds, §§20507(b), (c), (d). The most relevant of these are found in subsection (d), which provides that a State may not remove a name on change-of-residence grounds unless the registrant either (A) confirms in writing that he or she has moved or (B) fails to return a preaddressed, postage prepaid "return card" containing statutorily prescribed content and then fails to vote in any election during the period covering the next two general federal elections.

In addition to these specific change-of-residence requirements, the NVRA also contains a general "Failure-to-Vote Clause," §20507(b)(2), consisting of two parts. It first provides that a state removal program "shall not result in the removal of the name of any person . . . by reason of the person's failure to vote." Second, as added by the Help America Vote Act of 2002 (HAVA), it specifies that "nothing in [this prohibition] may be construed to prohibit a State from using the procedures" described above—sending a return card and removing registrants who fail to return the card and fail to vote for the requisite time. Since one of the requirements for removal under subsection (d) is the failure to vote, the explanation added by HAVA makes clear that the Failure-to-Vote Clause's prohibition on removal "by reason of the person's failure to vote" does not categorically preclude using nonvoting as part of a test for removal. Another provision makes this point even more clearly by providing that "no registrant

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may be removed *solely* by reason of a failure to vote." §21083(a)(4)(A) (emphasis added).

Respondents contend that Ohio's process for removing voters on change-of-residence grounds violates this federal law. The Ohio process at issue relies on the failure to vote for two years as a rough way of identifying voters who may have moved. It sends these nonvoters a preaddressed, postage prepaid return card, asking them to verify that they still reside at the same address. Voters who do not return the card *and* fail to vote in any election for four more years are presumed to have moved and are removed from the rolls.

Held: The process that Ohio uses to remove voters on change-of-residence grounds does not violate the Failure-to-Vote Clause or any other part of the NVRA. Pp. 8–21.

(a) Ohio's law does not violate the Failure-to-Vote Clause. Pp. 8–16.

(1) Ohio's removal process follows subsection (d) to the letter: It does not remove a registrant on change-of-residence grounds unless the registrant is sent and fails to mail back a return card and then fails to vote for an additional four years. See §20507(d)(1)(B). Pp. 8–9.

(2) Nonetheless, respondents argue that Ohio's process violates subsection (b)'s Failure-to-Vote Clause by using a person's failure to vote twice over: once as the trigger for sending return cards and again as one of the two requirements for removal. But Congress could not have meant for the Failure-to-Vote Clause to cannibalize subsection (d) in that way. Instead, the Failure-to-Vote Clause, both as originally enacted in the NVRA and as amended by HAVA, simply forbids the use of nonvoting as *the sole criterion* for removing a registrant, and Ohio does not use it that way. The phrase "by reason of" in the Failure-to-Vote Clause denotes some form of causation, see *Gross* v. *FBL Financial Services, Inc.*, 557 U. S. 167, 176, and in context sole causation is the only type of causation that harmonizes the Failure-to-Vote Clause and subsection (d). Any other reading would mean that a State that follows subsection (d) nevertheless can violate the Failure-to-Vote Clause. When Congress enacted HAVA, it made this point explicit by adding to the Failure-to-Vote Clause an explanation of how the clause is to be read, *i.e.*, in a way that does not contradict subsection (d). Pp. 9–12.

(3) Respondents' and the dissent's alternative reading is inconsistent with both the text of the Failure-to-Vote Clause and the clarification of its meaning in §21083(a)(4). Among other things, their reading would make HAVA's new language worse than redundant, since no sensible person would read the Failure-to-Vote Clause as prohibiting what subsections (c) and (d) expressly allow. Nor does

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the Court's interpretation render the Failure-to-Vote Clause superfluous; the clause retains meaning because it prohibits States from using nonvoting both as the ground for removal and as the sole evidence for another ground for removal (*e.g.*, as the sole evidence that someone has died). Pp. 12–15.

(4) Respondents' additional argument—that so many registered voters discard return cards upon receipt that the failure to send cards back is worthless as evidence that an addressee has moved—is based on a dubious empirical conclusion that conflicts with the congressional judgment found in subsection (d). Congress clearly did not think that the failure to send back a return card was of no evidentiary value, having made that conduct one of the two requirements for removal under subsection (d). Pp. 15–16.

(b) Nor has Ohio violated other NVRA provisions. Pp. 16–21.

(1) Ohio removes the registrants at issue on a permissible ground: change of residence. The failure to return a notice and the failure to vote simply serve as *evidence* that a registrant has moved, not as the ground itself for removal. Pp. 16–17.

(2) The NVRA contains no "reliable indicator" prerequisite to sending notices, requiring States to have good information that someone has moved before sending them a return card. So long as the trigger for sending such notices is "uniform, nondiscriminatory, and in compliance with the Voting Rights Act," §20507(b)(1), States may use whatever trigger they think best, including the failure to vote. Pp. 17–19.

(3) Ohio has not violated the NVRA's "reasonable effort" provision, §20507(a)(4). Even assuming that this provision authorizes federal courts to go beyond the restrictions set out in subsections (b), (c), and (d) and strike down a state law that does not meet some standard of "reasonableness," Ohio's process cannot be unreasonable because it uses the change-of-residence evidence that Congress said it could: the failure to send back a notice coupled with the failure to vote for the requisite period. Ohio's process is accordingly lawful. Pp. 19–21.

838 F. 3d 699, reversed.

ALITO, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, and GORSUCH, JJ., joined. THOMAS, J., filed a concurring opinion. BREYER, J., filed a dissenting opinion, in which GINSBURG, SOTOMAYOR, and KAGAN, JJ., joined. SOTOMAYOR, J., filed a dissenting opinion.

SUPREME COURT OF THE UNITED STATES

No. 16–980

JON HUSTED, OHIO SECRETARY OF STATE, PETITIONER *v.* A. PHILIP RANDOLPH INSTITUTE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[June 11, 2018]

JUSTICE ALITO delivered the opinion of the Court.

It has been estimated that 24 million voter registrations in the United States—about one in eight—are either invalid or significantly inaccurate. Pew Center on the States, Election Initiatives Issue Brief (Feb. 2012). And about 2.75 million people are said to be registered to vote in more than one State. *Ibid.*

At issue in today's case is an Ohio law that aims to keep the State's voting lists up to date by removing the names of those who have moved out of the district where they are registered. Ohio uses the failure to vote for two years as a rough way of identifying voters who may have moved, and it then sends a preaddressed, postage prepaid card to these individuals asking them to verify that they still reside at the same address. Voters who do not return this card *and* fail to vote in any election for four more years are presumed to have moved and are removed from the rolls. We are asked to decide whether this program complies with federal law.

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Like other States, Ohio requires voters to reside in the district in which they vote. Ohio Rev. Code Ann. §3503.01(A) (West Supp. 2017); see National Conference of State Legislatures, Voting by Nonresidents and Noncitizens (Feb. 27, 2015). When voters move out of that district, they become ineligible to vote there. See §3503.01(A). And since more than 10% of Americans move every year,[1] deleting the names of those who have moved away is no small undertaking.

For many years, Congress left it up to the States to maintain accurate lists of those eligible to vote in federal elections, but in 1993, with the enactment of the National Voter Registration Act (NVRA), Congress intervened. The NVRA "erect[s] a complex superstructure of federal regulation atop state voter-registration systems." *Arizona* v. *Inter Tribal Council of Ariz., Inc.*, 570 U. S. 1, 5 (2013). The Act has two main objectives: increasing voter registration and removing ineligible persons from the States' voter registration rolls. See §2, 107 Stat. 77, 52 U. S. C. §20501(b).

To achieve the latter goal, the NVRA requires States to "conduct a general program that makes a reasonable effort to remove the names" of voters who are ineligible "by reason of" death or change in residence. §20507(a)(4).

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[1] United States Census Bureau, CB16–189, Americans Moving at Historically Low Rates (Nov. 16, 2016), available at https://www.census.gov/newsroom/press-releases/2016/cb16-189.html (all Internet materials as last visited June 8, 2018). States must update the addresses of even those voters who move within their county of residence, for (among other reasons) counties may contain multiple voting districts. Cf. *post*, at 12 (BREYER, J., dissenting). For example, Cuyahoga County contains 11 State House districts. See House District Map, Ohio House Districts 2012–2022, online at http://www.ohiohouse.gov/members/district-map.

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