

'Use it or lose it?' Why the ability to vote shouldn't depend on actually doing so

The US Supreme Court has ruled that Ohio's controversial plans to remove habitual non-voters from the electoral register is constitutional. **Christopher Stafford** argues that such a measure has serious consequences for encouraging democratic participation – and there are better ways of ensuring the accuracy of the electoral register.



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The electoral register is a key tool of representative democracy, but in order for it to fulfil its role it needs to be accurate and up to date. Governments will occasionally attempt to bring in new rules to clean up the list, such as a controversial measure recently introduced in Ohio in the US, which has been criticised as a purge. Dubbed the 'use it or lose it' policy by commentators, it means that people on the register who fail to vote regularly are sent a letter by election officials. If no response is received and the individual fails to vote over the following four-year period, they are assumed to have moved away and are removed from the electoral roll.

What's the issue?

Critics have argued that the practice violates [The National Voter Registration Act](#), which is intended to make it easier for people to register to vote and, importantly, stay registered. However, on 11 June 2018 the [Supreme Court of the United States](#) voted by a 5–4 margin that the State of Ohio was not in this case in breach of the constitution. In its [ruling](#), the majority opinion of the Court was that Ohio's practices did not contradict the NVRA because it did not remove people solely because they didn't vote and made reasonable efforts, by sending a letter, to reach out to such people. Regardless of the legality, a [study](#) by Reuters found that voters from Democrat-leaning areas have been removed from the list at twice the rate of those from Republican areas, but it is areas with a high proportion of poor, African-American people that suffer most.

This ruling sets a precedent that other US states could follow and highlights important issues about voter registration and access to democracy. There is no doubt that electoral registers need to be kept accurate, with an estimated one in every eight voter registrations in the US '[either invalid or significantly inaccurate](#)'. But doing so is no easy task, since it can be very difficult and costly to keep tabs on every single voter and whether they move away or die. In one notorious case, Governor of Florida Rick Scott was [told](#) in 2006 that he couldn't vote because he was dead, or at least, someone with the same name and date of birth was, and he had been removed from the register instead.

But taking all of this into account, should the red-flag to begin the process of removing an individual from the register be their lack of voting? Moreover, should it then be dependent on a response to a single letter, which could easily get lost, forgotten or not be understood by the recipient?

Why don't people vote?

The defence offered by Ohio Secretary of State Jon Husted in an [interview](#) was that 'if this is [a] really important thing to you in your life, voting, you probably would have done so within a six-year period.' What such a stance fails to acknowledge is that there are plenty of legitimate reasons other than apathy as to why people may not vote. In [An Economic Theory of Democracy](#), Anthony Downs argues that voting, as with anything else in someone's life, will only be engaged in if the benefits outweigh the costs. There are many who maintain that voting just isn't [rational](#), and even if the average voter isn't aware of these academic debates, for most people, there are [few concrete payoffs to voting](#).

Factors such as illness, transport and work can all prevent people from voting, either by reducing the benefit of taking time out of their day or by serving as an outright barrier to doing so. One story [highlighted](#) recently was of US Soldier Joseph Helle who missed several elections as he was deployed in Iraq and Afghanistan and found himself removed from the electoral register as a result. While this is an extreme example, the fact is that in most places there is no automatic right to take time off work to vote, and queues outside polling stations can be so [long](#) that the waiting time is neither desirable nor practical for many.

A better way

It is also questionable as to whether Ohio's practice is actually a suitable way to improve the accuracy of the electoral register. When [interviewed](#), one of the key plaintiffs in the case against Ohio, Larry Harmon, said that despite six years of non-voting, it should have been easy enough to see that he still lived at his address given he paid all his taxes and registered his car there. A former member of the Department of Justice, [Samuel Bagenstos](#), has also argued that such factors are a much better way to prove residency. Interestingly, the NVRA makes provisions for this, suggesting that the Department of Motor Vehicles should incorporate voter registration into the process of applying for or renewing a driving licence, something which [90% of potential voters](#) will do at some point. This would not only help to keep the list more accurate but also, research indicates, has [increased turnout](#) by between 4.7 and 8.7%.

More engagement, not less

In a place like Ohio, where [turnout can struggle to exceed 40%](#), with it only just scraping past 30% in the 2017 elections, should the priority really be cleaning up the electoral register? Arguably, encouraging more people to come out and vote is more beneficial to the legitimacy of a democracy. Those who don't vote are already less likely to be [acknowledged](#) by politicians in favour of those that do and removing an individual's ability to vote entirely almost guarantees they will fall off politicians' radars.

Studies suggest that electoral rules in the US can affect voter turnout by [up to 14%](#), while an [increase of 2%](#) can be achieved simply by not purging the electoral register. Many academic studies have shown that voting can become [habitual](#) and if people can be encouraged to vote just once they are likely to do so again, making such a strategy cost-effective for democracy. Given that many people, notably the young, may be engaging with politics through less traditional [methods](#) than voting, there are many potential converts out there.

Confusing not voting with ineligibility or apathy risks disenfranchising people that do care, and could prevent them from becoming actively involved in the future should they decide that they do want to vote. Rather than removing these people from the register and alienating them further, they and their reasons for not voting need to be engaged with to convince them that voting is a worthwhile activity.

This article gives the views of the author, not the position of Democratic Audit.

About the author

Christopher Stafford is a PhD student at the University of Nottingham, focusing on democracy and representation. His current research investigates how MPs have reacted to the result of the EU Membership Referendum and how this relates to the opinions of their constituents.

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