Brnovich v. Democratic National Committee, 594 U.S. ___ (2021)*

JUSTICE ALITO delivered the opinion of the Court.

In these cases, we are called upon for the first time to apply §2 of the Voting Rights Act [(VRA)] of 1965 to regulations that govern how ballots are collected and counted. [...]

I

A

Congress enacted the landmark Voting Rights Act of 1965, 79 Stat. 437, as amended, 52 U. S. C. §10301 et seq., in an effort to achieve at long last what the Fifteenth Amendment had sought to bring about 95 years earlier: an end to the denial of the right to vote based on race. [...]

[Originally, s]ection 2 [of the VRA] stated simply that "[n]o voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color." 79 Stat. 437. [...]

[T]he question whether a VRA §2 claim required discriminatory purpose or intent came before this Court in *Mobile v. Bolden*, 446 U.S. 55 (1980). The plurality opinion for four Justices concluded first that §2 of the VRA added nothing to the protections afforded by the Fifteenth Amendment. Id., at 60–61. The plurality then observed that prior decisions "ha[d] made clear that action by a State that is racially neutral on its face violates the Fifteenth Amendment only if motivated by a discriminatory purpose." [...]

Shortly after *Bolden* was handed down, Congress amended §2 of the VRA. [...] The bill that was initially passed by the House of Representatives included what is now §2(a). In place of the phrase "to deny or abridge the right . . . to vote on account of race or color," the amendment substituted "in a manner which *results in* a denial or abridgement of the right . . . to vote on account of race or color." [...]

[Additionally, w]hat is now §2(b) was added, and that provision sets out what must be shown to prove a §2 violation. It requires consideration of "the totality of circumstances" in each case and demands proof that "the political processes leading to nomination or election in the State or political subdivision are not *equally open* to participation" by members of a protected class "*in that its members have less opportunity* than other members of the electorate to participate in the political process and to elect representatives of their choice." 52 U. S. C. §10301(b)[.]

This Court first construed the amended §2 in *Thornburg v. Gingles*, 478 U.S. 30 (1986)—[a] vote-dilution case. [...] In the years since *Gingles*, we have heard a steady stream of §2 vote-dilution cases[,] but until today, we have not considered how §2 applies to generally applicable time, place, or manner voting rules. [...]

B

[...] [Currently, a]ll Arizonans may vote by mail for 27 days before an election using an "early ballot." [...] In addition, during the 27 days before an election, Arizonans may vote in person at an

*Note: This majority opinion has been edited from the original text by Dr. Travis Braidwood for classroom use. The full case text can be found here: < https://supreme.justia.com/cases/federal/us/594/19-1257/ >.

early voting location in each county. See §§16–542(A), (E). And they may also vote in person on election day.

Each county is free to conduct election-day voting either by using the traditional precinct model or by setting up "voting centers." [...]

The regulations at issue in this suit govern precinct-based election-day voting and early mail-in voting. Voters who choose to vote in person on election day in a county that uses the precinct system must vote in their assigned precincts. See §16–122 (2015); see also §16–135. If a voter goes to the wrong polling place, poll workers are trained to direct the voter to the right location. [I]f it turns out that the voter cast a ballot at the wrong precinct, that vote is not counted. [...]

In 2016, the state legislature enacted House Bill 2023 (HB 2023), which makes it a crime for any person other than a postal worker, an elections official, or a voter's caregiver, family member, or household member to knowingly collect an early ballot—either before or after it has been completed. [...]

In 2016, the Democratic National Committee and certain affiliates brought this suit [claiming] that both the State's refusal to count ballots cast in the wrong precinct and its ballot-collection restriction "adversely and disparately affect Arizona's American Indian, Hispanic, and African American citizens," in violation of §2 of the VRA. [...] In addition, they alleged that the ballot-collection restriction was "enacted with discriminatory intent" and thus violated both §2 of the VRA and the Fifteenth Amendment[.]

After a 10-day bench trial, 329 F. Supp. 3d, at 832, 833–838, the District Court made extensive findings of fact and rejected all the plaintiffs' claims[.] The court first found that the out-of-precinct policy "has no meaningfully disparate impact on the opportunities of minority voters to elect" representatives of their choice. Id., at 872. The percentage of ballots invalidated under this policy was very small (0.15% of all ballots cast in 2016) and decreasing, and while the percentages were slightly higher for members of minority groups, the court found that this disparity "does not result in minorities having unequal access to the political process."[...] The District Court similarly found that the ballot- collection restriction is unlikely to "cause a meaningful inequality in the electoral opportunities of minorities." [...] Finally, the court found that the ballot-collection law had not been enacted with discriminatory intent. [...] The court added that "some individual legislators and proponents were motivated in part by partisan interests." [...] But it distinguished between partisan and racial motives, while recognizing that "racially polarized voting can sometimes blur the lines[."]

A divided panel of the Ninth Circuit affirmed, but an en banc court reversed. The en banc court first concluded that both the out-of-precinct policy and the ballot-collection restriction imposed disparate burdens on minority voters because such voters were more likely to be adversely affected by those rules[.] Then, based on an assessment of the vote-dilution factors used in *Gingles*, the en banc majority found that these disparate burdens were "in part caused by or linked to 'social and historical conditions' " that produce inequality. [...]

[Note to readers: Section II on legal standing omitted]

III

A

We start with the text of VRA §2. It now provides:

> "(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title, as provided in subsection (b).
>
> "(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. [...]

[B]ecause this is our first §2 time, place, or manner case, a fresh look at the statutory text is appropriate. [...]

B

[...] The key requirement is that the political processes leading to nomination and election (here, the process of voting) must be "equally open" to minority and non-minority groups alike, and the most relevant definition of the term "open," as used in §2(b), is "without restrictions as to who may participate[.]" Thus, equal openness and equal opportunity are not separate requirements. Instead, equal opportunity helps to explain the meaning of equal openness. [...]

C

One other important feature of §2(b) stands out. The provision requires consideration of "the totality of circumstances." [...] We will not attempt to compile an exhaustive list, but several important circumstances should be mentioned.

1

1. [...] The concepts of "open[ness]" and "opportunity" connote the absence of obstacles and burdens that block or seriously hinder voting, and therefore the size of the burden imposed by a voting rule is important. After all, every voting rule imposes a burden of some sort. Voting takes time and, for almost everyone, some travel, even if only to a nearby mailbox. [...]

2. For similar reasons, the degree to which a voting rule departs from what was standard practice when §2 was amended in 1982 is a relevant consideration. [...] We doubt that Congress intended to uproot facially neutral time, place, and manner regulations that have a long pedigree or are in widespread use in the United States. We have no need to decide whether adherence to, or a return to, a 1982 framework is necessarily lawful under §2, but the degree to which a challenged rule has a long pedigree or is in widespread use in the United States is a circumstance that must be taken into account.

3. The size of any disparities in a rule's impact on members of different racial or ethnic groups is also an important factor to consider. Small disparities are less likely than large ones to indicate that a system is not equally open. [...] The size of any disparity matters. And in assessing the size of any disparity, a meaningful comparison is essential.[...]

4. Next, courts must consider the opportunities provided by a State's entire system of voting when assessing the burden imposed by a challenged provision. [...] Thus, where a State provides

multiple ways to vote, any burden imposed on voters who choose one of the available options cannot be evaluated without also taking into account the other available means.

5. Finally, the strength of the state interests served by a challenged voting rule is also an important factor that must be taken into account. [...]

One strong and entirely legitimate state interest is the prevention of fraud. [...] Ensuring that every vote is cast freely, without intimidation or undue influence, is also a valid and important state interest. [...]

2

[I]t is important to keep in mind that the *Gingles* or "Senate" factors grew out of and were designed for use in vote-dilution cases[, b]ut in cases involving neutral time, place, and manner rules, the only relevance of these and the remaining factors is to show that minority group members suffered discrimination in the past (see factor one above) and that effects of that discrimination persist (see factor five above).[...]

D

[...] The dissent [...] would rewrite the text of §2 and make it turn almost entirely on just one circumstance—disparate impact. [...] The dissent provides historical background that all Americans should remember [see dissenting opinion of Kagan], but that background does not tell us how to decide these cases. The dissent quarrels with the decision in *Shelby County v. Holder*, 570 U.S. 529 (2013) [a]nd it dwells on points of law that nobody disputes: [...] that §2 does not demand proof of discriminatory purpose; and that a "facially neutral" law or practice may violate that provision. [But §2(b)] directs us to consider "the totality of circumstances," not, as the dissent would have it, the totality of just one circumstance. [...] That requirement also would have the potential to invalidate just about any voting rule a State adopts. Take the example of a State's interest in preventing voting fraud. Even if a State could point to a history of serious voting fraud within its own borders, the dissent would apparently strike down a rule designed to prevent fraud unless the State could demonstrate an inability to combat voting fraud in any other way, such as by hiring more investigators[.]

IV

A

In light of the principles set out above, neither Arizona's out-of-precinct rule nor its ballot-collection law violates §2 of the VRA. Arizona's out-of-precinct rule enforces the requirement that voters who choose to vote in person on election day must do so in their assigned precincts. Having to identify one's own polling place and then travel there to vote does not exceed the "usual burdens of voting." *Crawford* [*v. Marion County Election Bd.*], 553 U. S., at 198 (opinion of Stevens, J.)[.]

Not only are these unremarkable burdens, but the District Court's uncontested findings show that the State made extensive efforts to reduce their impact on the number of valid votes ultimately cast. [...]

Next, the racial disparity in burdens allegedly caused by the out-of-precinct policy is small in absolute terms. [For example, t]he Court of Appeals attempted to paint a different picture, but its use of statistics was highly misleading for reasons that were well explained by Judge Easterbrook in a §2 case involving voter IDs. As he put it, a distorted picture can be created by dividing one percentage by another. [...]

In addition, precinct-based voting helps to ensure that each voter receives a ballot that lists only the candidates and public questions on which he or she can vote, and this orderly administration tends to decrease voter confusion and increase voter confidence in elections. [...] And the policy of not counting out-of-precinct ballots is widespread. [...]

Section 2 does not require a State to show that its chosen policy is absolutely necessary or that a less restrictive means would not adequately serve the State's objectives. [...] Partially counting out-of-precinct ballots would complicate the process of tabulation and could lead to disputes and delay. [...]

B

HB 2023 likewise passes muster under the results test of §2. Arizonans who receive early ballots can submit them by going to a mailbox, a post office, an early ballot drop box, or an authorized election official's office within the 27-day early voting period. [...]

The plaintiffs were unable to provide statistical evidence showing that HB 2023 had a disparate impact on minority voters. Instead, they called witnesses who testified that third-party ballot collection tends to be used most heavily in disadvantaged communities and that minorities in Arizona—especially Native Americans—are disproportionately disadvantaged. [...] And without more concrete evidence, we cannot conclude that HB 2023 results in less opportunity to participate in the political process[.]

Even if the plaintiffs had shown a disparate burden caused by HB 2023, the State's justifications would suffice to avoid §2 liability. "A State indisputably has a compelling interest in preserving the integrity of its election process." *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (*per curiam*) (internal quotation marks omitted). Limiting the classes of persons who may handle early ballots to those less likely to have ulterior motives deters potential fraud and improves voter confidence. [...]

The Court of Appeals thought that the State's justifications for HB 2023 were tenuous in large part because there was no evidence that fraud in connection with early ballots had occurred in Arizona. [But] it should go without saying that a State may take action to prevent election fraud without waiting for it to occur and be detected within its own borders. [...]

V

We also granted certiorari to review whether the Court of Appeals erred in concluding that HB 2023 was enacted with a discriminatory purpose. The District Court found that it was not[.] And while some opponents of the bill accused Republican legislators of harboring racially discriminatory motives, that view was not uniform. [...]

We are more than satisfied that the District Court's interpretation of the evidence is permissible. The spark for the debate over mail-in voting may well have been provided by one Senator's enflamed partisanship, but partisan motives are not the same as racial motives. See *Cooper v. Harris*, 581 U. S. ___, ___–___ (2017) (slip op., at 19–20). [...]

* * *

Arizona's out-of-precinct policy and HB 2023 do not violate §2 of the VRA, and HB 2023 was not enacted with a racially discriminatory purpose. The judgment of the Court of Appeals is reversed, and the cases are remanded for further proceedings consistent with this opinion.

It is so ordered.