



U.S. Supreme Court Rules on Voting Rights

By Lisa Soronen, Executive Director, State & Local Legal Center (SLLC)

In [*Brnovich v. Democratic National Committee*](#) the U.S. Supreme Court held 6-3 that Arizona's requirement that ballots cast in the wrong precinct and ballots collected by anyone other than a limited group of people not be counted didn't violate §2 of the Voting Rights Act.

The Democratic National Committee (DNC) sued the Arizona Attorney General claiming that Arizona's refusal to count ballots cast in the wrong precinct and ballots collected by anyone other than an election official, a mail carrier, or a voter's family member, household member, or caregiver "adversely and disparately affect Arizona's American Indian, Hispanic, and African American citizens," in violation §2. The DNC also alleged the ballot-collection restriction was enacted with discriminatory intent in violation of §2.

Section 2(a) disallows voting practices that "results in a denial or abridgement of the right" to vote based on race or color. Section 2(b) states a violation occurs only where "the political processes leading to nomination or election" are not "equally open to participation" by members of the relevant protected group "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."

According to Justice Alito, writing for the majority, "it appears that the core of §2(b) is the requirement that voting be 'equally open.'" The Court stated that it was not announcing a test to govern all §2 challenges to rules regulating the



“time, place, or manner for casting ballots.” Instead, it offered five non-exhaustive factors to determine whether voting is “equally open.” Those factors include: the size of the burden imposed by the rule, whether the rule departs from standard voting practice in 1982 when §2 was amended, the disparity of impact on different racial or ethnic groups, the openness of the state’s entire voting system, and the strength of the state interests served by the rule. Applying these five factors, the Court concluded neither Arizona’s out-of-precinct rule nor its ballot-collection law violates §2.

Regarding out-of-precinct ballots, the Court found “[h]aving to identify one’s own polling place and then travel there to vote does not exceed the ‘usual burdens of voting’” particularly when considering Arizona’s “political processes” as a whole. While in 2016 over 1% of voters of color versus .5% of white voters voted out of precinct, according to the Court, “[a] policy that appears to work for 98% or more of voters to whom it applies—minority and non-minority alike—is unlikely to render a system unequally open.” Finally, not counting out-of-precinct votes “induces compliance” with the requirement that voters vote at their assigned polling place. Precinct-based voting furthers important state interests including distributing voters more evenly at polling places and reducing wait times.

Regarding limits on ballot collection, the Court noted that Arizonans who receive early ballots have numerous options to cast their ballots, can rely on multiple proxies, and have 27 days to vote. The DNC was unable to provide statistical evidence that limits on ballot collection have had a disparate impact on minority voters. Finally, the Court pointed out that “third-party ballot collection can lead to pressure and intimidation.”



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The Supreme Court agreed the federal district court's finding of a lack of discriminatory intent in enacting the ballot-collection restriction "had ample support in the record." According to the Court, what happened after the airing of a former Arizona State Senator's "unfounded and often far-fetched allegations of ballot collection fraud" and a "racially-tinged" video created by a private party "was a serious legislative debate on the wisdom of early mail-in voting."

Justice Kagan dissented; Justice Breyer and Sotomayor joined her opinion.

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