Syllabus

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

HARRIS ET AL. *v*. ARIZONA INDEPENDENT REDISTRICTING COMMISSION ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

No. 14–232. Argued December 8, 2015—Decided April 20, 2016

After the 2010 census, Arizona's independent redistricting commission (Commission), comprising two Republicans, two Democrats, and one Independent, redrew Arizona's legislative districts, with guidance from legal counsel, mapping specialists, a statistician, and a Voting Rights Act specialist. The initial plan had a maximum population deviation from absolute equality of districts of 4.07%, but the Commission adopted a revised plan with an 8.8% deviation on a 3-to-2 vote, with the Republican members dissenting. After the Department of Justice approved the revised plan as consistent with the Voting Rights Act, appellants filed suit, claiming that the plan's population variations were inconsistent with the Fourteenth Amendment. A three-judge Federal District Court entered judgment for the Commission, concluding that the "deviations were primarily a result of good-faith efforts to comply with the Voting Rights Act . . . even though partisanship played some role."

Held: The District Court did not err in upholding Arizona's redistricting plan. Pp. 3–11.

(a) The Fourteenth Amendment's Equal Protection Clause requires States to "make an honest and good faith effort to construct [legislative] districts . . . as nearly of equal population as is practicable," *Reynolds* v. *Sims*, 377 U. S. 533, 577, but mathematical perfection is not required. Deviations may be justified by "legitimate considerations," *id*., at 579, including "traditional districting principles such as compactness [and] contiguity," *Shaw* v. *Reno*, 509 U. S. 630, 647, as well as a state interest in maintaining the integrity of political subdivisions, *Mahan* v. *Howell*, 410 U. S. 315, 328, a competitive balance among political parties, *Gaffney* v. *Cummings*, 412 U. S. 735, 752,

and, before *Shelby County* v. *Holder*, 570 U. S. ___, compliance with §5 of the Voting Rights Act. It was proper for the Commission to proceed on the last basis here. In addition, "minor deviations from mathematical equality"—*i.e.,* deviations "under 10%," *Brown* v. *Thomson*, 462 U. S. 835, 842—do not, by themselves, "make out a prima facie case of invidious discrimination under the Fourteenth Amendment [requiring] justification by the State," *Gaffney*, *supra*, at 745. Because the deviation here is under 10%, appellants cannot rely upon the numbers to show a constitutional violation. Instead, they must show that it is more probable than not that the deviation reflects the predominance of illegitimate reapportionment factors rather than "legitimate considerations." Pp. 3–5.

(b) Appellants have failed to meet that burden here, where the record supports the District Court's conclusion that the deviations predominantly reflected Commission efforts to achieve compliance with the Voting Rights Act, not to secure political advantage for the Democratic Party. To meet the Voting Rights Act's nonretrogression requirement, a new plan, when compared to the current plan (benchmark plan), must not diminish the number of districts in which minority groups can "elect their preferred candidates of choice" (ability-to-elect districts). A State can obtain legal assurance that it has satisfied this requirement if it submits its proposed plan to the Justice Department and the Department does not object to the plan. The record shows that the Commission redrew the initial map to ensure that the plan had 10 ability-to-elect districts, the same number as the benchmark plan. But after a statistician reported that the Justice Department still might not agree with the plan, the Commission changed additional boundaries, causing District 8, a Republican leaning district, to become more politically competitive. Because this record well supports the District Court's finding that the Commission was trying to comply with the Voting Rights Act, appellants have not shown that it is more probable than not that illegitimate considerations were the predominant motivation for the deviations. They have thus failed to show that the plan violates the Equal Protection Clause. Pp. 5–9.

(c) Appellants' additional arguments are unpersuasive. While Arizona's Democratic-leaning districts may be somewhat underpopulated and its Republican-leaning districts somewhat overpopulated, these variations may reflect only the tendency of Arizona's 2010 minority populations to vote disproportionately for Democrats and thus can be explained by the Commission's efforts to maintain at least 10 ability-to-elect districts. *Cox* v. *Larios*, 542 U. S. 947, in which the Court affirmed a District Court's conclusion that a Georgia reapportionment plan violated the Equal Protection Clause where its devia-

Syllabus

tion, though less than 10%, resulted from the use of illegitimate factors, is inapposite because appellants have not carried their burden of showing the use of illegitimate factors here. And because *Shelby County* was decided after Arizona's plan was created, it has no bearing on the issue whether the State's attempt to comply with the Voting Rights Act is a legitimate state interest. Pp. 9–11.

993 F. Supp. 2d 1042, affirmed.

BREYER, J., delivered the opinion for a unanimous Court.

SUPREME COURT OF THE UNITED STATES

No. 14–232

WESLEY W. HARRIS, ET AL., APPELLANTS *v.* ARIZONA INDEPENDENT REDISTRICTING COMMISSION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

[April 20, 2016]

JUSTICE BREYER delivered the opinion of the Court.

Appellants, a group of Arizona voters, challenge a redistricting plan for the State's legislature on the ground that the plan's districts are insufficiently equal in population. See *Reynolds* v. *Sims*, 377 U. S. 533, 577 (1964). Because the maximum population deviation between the largest and the smallest district is less than 10%, the appellants cannot simply rely upon the numbers to show that the plan violates the Constitution. See *Brown* v. *Thomson*, 462 U. S. 835, 842 (1983). Nor have appellants adequately supported their contentions with other evidence. We consequently affirm a 3-judge Federal District Court decision upholding the plan.

I

In 2000, Arizona voters, using the initiative process, amended the Arizona Constitution to provide for an independent redistricting commission. See *Arizona State Legislature* v. *Arizona Independent Redistricting Comm'n*, 576 U. S. ___, ___ (2015) (slip op., at 35) (upholding the amendment as consistent with federal constitutional and

statutory law). Each decade, the Arizona Commission on Appellate Court Appointments creates three slates of individuals: one slate of 10 Republicans, one slate of 10 Democrats, and one slate of 5 individuals not affiliated with any political party. The majority and minority leader of the Arizona Legislature each select one Redistricting Commission member from the first two lists. These four selected individuals in turn choose one member from the third, nonpartisan list. See Ariz. Const., Art. IV, pt. 2, §§1(5)–(8). Thus, the membership of the Commission consists of two Republicans, two Democrats, and one independent.

After each decennial census, the Commission redraws Arizona's 30 legislative districts. The first step in the process is to create "districts of equal population in a grid-like pattern across the state." §1(14). It then adjusts the grid to "the extent practicable" in order to take into account the need for population equality; to maintain geographic compactness and continuity; to show respect for "communities of interest"; to follow locality boundaries; and to use "visible geographic features" and "undivided . . . tracts." §§1(14)(B)–(E). The Commission will "favo[r]" political "competitive[ness]" as long as its efforts to do so "create no significant detriment to the other goals." *Id.*, §1(14)(F). Finally, it must adjust boundaries "as necessary" to comply with the Federal Constitution and with the federal Voting Rights Act. §1(14)(A).

After the 2010 census, the legislative leadership selected the Commission's two Republican and two Democratic members, who in turn selected an independent member, Colleen Mathis. Mathis was then elected chairwoman. The Commission hired two counsel, one of whom they thought of as leaning Democrat and one as leaning Republican. It also hired consultants, including mapping specialists, a statistician, and a Voting Rights Act specialist. With the help of its staff, it drew an initial plan, based

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.