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

BRNOVICH, ATTORNEY GENERAL OF ARIZONA, ET AL. *v.* DEMOCRATIC NATIONAL COMMITTEE ET AL.

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

No. 19–1257. Argued March 2, 2021—Decided July 1, 2021*

Arizona law generally makes it very easy to vote. Voters may cast their ballots on election day in person at a traditional precinct or a "voting center" in their county of residence. Ariz. Rev. Stat. §16–411(B)(4). Arizonans also may cast an "early ballot" by mail up to 27 days before an election, §§16–541, 16–542(C), and they also may vote in person at an early voting location in each county, §§16–542(A), (E). These cases involve challenges under §2 of the Voting Rights Act of 1965 (VRA) to aspects of the State's regulations governing precinct-based election-day voting and early mail-in voting. First, Arizonans who vote in person on election day in a county that uses the precinct system must vote in the precinct to which they are assigned based on their address. See §16–122; see also §16–135. If a voter votes in the wrong precinct, the vote is not counted. Second, for Arizonans who vote early by mail, Arizona House Bill 2023 (HB 2023) 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. §§16–1005(H)–(I).

The Democratic National Committee and certain affiliates filed suit, alleging that both the State's refusal to count ballots cast in the wrong precinct and its ballot-collection restriction had an adverse and disparate effect on the State's American Indian, Hispanic, and African-American citizens in violation of §2 of the VRA. Additionally, they alleged that the ballot-collection restriction was "enacted with discriminatory

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*Together with No. 19–1258, *Arizona Republican Party et al.* v. *Democratic National Committee et al.*, also on certiorari to the same court.

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intent" and thus violated both §2 of the VRA and the Fifteenth Amendment. The District Court rejected all of the plaintiffs' claims. The court found that the out-of-precinct policy had no "meaningfully disparate impact" on minority voters' opportunities to elect representatives of their choice. Turning to the ballot-collection restriction, the court found that it was unlikely to cause "a meaningful inequality" in minority voters' electoral opportunities and that it had not been enacted with discriminatory intent. A divided panel of the Ninth Circuit affirmed, but the en banc court reversed. It first concluded that both the out-of-precinct policy and the ballot-collection restriction imposed a disparate burden on minority voters because they were more likely to be adversely affected by those rules. The en banc court also held that the District Court had committed clear error in finding that the ballot-collection law was not enacted with discriminatory intent.

Held: 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. Pp. 12–37.

(a) Two threshold matters require the Court's attention. First, the Court rejects the contention that no petitioner has Article III standing to appeal the decision below as to the out-of-precinct policy. All that is needed to entertain an appeal of that issue is one party with standing. *Little Sisters of the Poor Saints Peter and Paul Home* v. *Pennsylvania*, 591 U. S. ___, ___, n. 6. Attorney General Brnovich, as an authorized representative of the State (which intervened below) in any action in federal court, fits the bill. See *Virginia House of Delegates* v. *Bethune-Hill*, 587 U. S. ___, ___. Second, the Court declines in these cases to announce a test to govern all VRA §2 challenges to rules that specify the time, place, or manner for casting ballots. It is sufficient for present purposes to identify certain guideposts that lead to the Court's decision in these cases. Pp. 12–13.

(b) The Court's statutory interpretation starts with a careful consideration of the text. Pp. 13–25.

(1) The Court first construed the current version of §2 in *Thornburg* v. *Gingles*, 478 U. S. 30, which was a vote-dilution case where the Court took its cue from §2's legislative history. The Court's many subsequent vote-dilution cases have followed the path *Gingles* charted. Because the Court here considers for the first time how §2 applies to generally applicable time, place, or manner voting rules, it is appropriate to take a fresh look at the statutory text. Pp. 13–14.

(2) In 1982, Congress amended the language in §2 that had been interpreted to require proof of discriminatory intent by a plurality of the Court in *Mobile* v. *Bolden*, 446 U. S. 55. In place of that language, §2(a) now uses the phrase "in a manner which results in a denial or

abridgement of the right . . . to vote on account of race or color." Section 2(b) in turn explains what must be shown to establish a §2 violation. Section 2(b) states that §2 is violated 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." (Emphasis added.) In §2(b), the phrase "in that" is "used to specify the respect in which a statement is true." New Oxford American Dictionary 851. Thus, equal openness and equal opportunity are not separate requirements. Instead, it appears that the core of §2(b) is the requirement that voting be "equally open." The statute's reference to equal "opportunity" may stretch that concept to some degree to include consideration of a person's ability to use the means that are equally open. But equal openness remains the touchstone. Pp. 14–15.

(3) Another important feature of §2(b) is its "totality of circumstances" requirement. Any circumstance that has a logical bearing on whether voting is "equally open" and affords equal "opportunity" may be considered. Pp. 15–21.

(i) The Court mentions several important circumstances but does not attempt to compile an exhaustive list. Pp. 15–19.

(A) The size of the burden imposed by a challenged voting rule is highly relevant. Voting necessarily requires some effort and compliance with some rules; thus, the concept of a voting system that is "equally open" and that furnishes equal "opportunity" to cast a ballot must tolerate the "usual burdens of voting." *Crawford* v. *Marion County Election Bd.*, 553 U. S. 181, 198. Mere inconvenience is insufficient. P. 16.

(B) The degree to which a voting rule departs from what was standard practice when §2 was amended in 1982 is a relevant consideration. The burdens associated with the rules in effect at that time are useful in gauging whether the burdens imposed by a challenged rule are sufficient to prevent voting from being equally "open" or furnishing an equal "opportunity" to vote in the sense meant by §2. Widespread current use is also relevant. Pp. 17–18.

(C) The size of any disparities in a rule's impact on members of different racial or ethnic groups is an important factor to consider. Even neutral regulations may well result in disparities in rates of voting and noncompliance with voting rules. The mere fact that there is some disparity in impact does not necessarily mean that a system is not equally open or that it does not give everyone an equal opportunity to vote. And small disparities should not be artificially magnified. P. 18.

(D) Consistent with §2(b)'s reference to a States' "political

processes," 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 associated with one option cannot be evaluated without also taking into account the other available means. P. 18.

(E) The strength of the state interests—such as the strong and entirely legitimate state interest in preventing election fraud—served by a challenged voting rule is an important factor. Ensuring that every vote is cast freely, without intimidation or undue influence, is also a valid and important state interest. In determining whether a rule goes too far "based on the totality of circumstances," rules that are supported by strong state interests are less likely to violate §2. Pp. 18–19.

(ii) Some factors identified in *Thornburg* v. *Gingles,* 478 U. S. 30, were designed for use in vote-dilution cases and are plainly inapplicable in a case that involves a challenge to a facially neutral time, place, or manner voting rule. While §2(b)'s "totality of circumstances" language permits consideration of certain other *Gingles* factors, their only relevance in cases involving neutral time, place, and manner rules is to show that minority group members suffered discrimination in the past and that effects of that discrimination persist. The disparate-impact model employed in Title VII and Fair Housing Act cases is not useful here. Pp. 19–21.

(4) Section 2(b) directs courts to consider "the totality of circumstances," but the dissent would make §2 turn almost entirely on one circumstance: disparate impact. The dissent also would adopt a least-restrictive means requirement that would force a State to prove that the interest served by its voting rule could not be accomplished in any other less burdensome way. Such a requirement has no footing in the text of §2 or the Court's precedent construing it and would have the potential to invalidate just about any voting rule a State adopts. Section 2 of the VRA provides vital protection against discriminatory voting rules, and no one suggests that discrimination in voting has been extirpated or that the threat has been eliminated. Even so, §2 does not transfer the States' authority to set non-discriminatory voting rules to the federal courts. Pp. 21–25.

(c) Neither Arizona's out-of-precinct policy nor its ballot-collection law violates §2 of the VRA. Pp. 25–34.

(1) Having to identify one's polling place and then travel there to vote does not exceed the "usual burdens of voting." *Crawford*, 553 U. S., at 198. In addition, the State made extensive efforts to reduce the impact of the out-of-precinct policy on the number of valid votes ultimately cast, *e.g.,* by sending a sample ballot to each household that includes a voter's proper polling location. The burdens of identifying

and traveling to one's assigned precinct are also modest when considering Arizona's "political processes" as a whole. The State offers other easy ways to vote, which likely explains why out-of-precinct votes on election day make up such a small and apparently diminishing portion of overall ballots cast.

Next, the racial disparity in burdens allegedly caused by the out-of-precinct policy is small in absolute terms. Of the Arizona counties that reported out-of-precinct ballots in the 2016 general election, a little over 1% of Hispanic voters, 1% of African-American voters, and 1% of Native American voters who voted on election day cast an out-of-precinct ballot. For non-minority voters, the rate was around 0.5%. A procedure 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.

Appropriate weight must be given to the important state interests furthered by precinct-based voting. It helps to distribute voters more evenly among polling places; it can put polling places closer to voter residences; and it helps to ensure that each voter receives a ballot that lists only the candidates and public questions on which he or she can vote. Precinct-based voting has a long pedigree in the United States, and the policy of not counting out-of-precinct ballots is widespread.

The Court of Appeals discounted the State's interests because it found no evidence that a less restrictive alternative would threaten the integrity of precinct-based voting. But §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. Considering the modest burdens allegedly imposed by Arizona's out-of-precinct policy, the small size of its disparate impact, and the State's justifications, the rule does not violate §2. Pp. 25–30.

(2) Arizona's HB 2023 also passes muster under §2. Arizonans can submit early ballots by going to a mailbox, a post office, an early ballot drop box, or an authorized election official's office. These options entail the "usual burdens of voting," and assistance from a statutorily authorized proxy is also available. The State also makes special provision for certain groups of voters who are unable to use the early voting system. See §16–549(C). And here, the plaintiffs were unable to show the extent to which HB 2023 disproportionately burdens minority voters.

Even if the plaintiffs were able to demonstrate a disparate burden caused by HB 2023, the State's "compelling interest in preserving the integrity of its election procedures" would suffice to avoid §2 liability. *Purcell* v. *Gonzalez*, 549 U. S. 1, 4. The Court of Appeals viewed the State's justifications for HB 2023 as tenuous largely because there was no evidence of early ballot fraud in Arizona. But prevention of fraud

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