



## Supreme Court to decide if Arizona voting regulations are racist

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The Supreme Court in early March will hear arguments in a voting rights case pitting Republican arguments about election integrity against Democratic claims of racial discrimination.

The case arose out of a dispute between the Arizona Republican Party and the Democratic National Committee and has been working its way through lower courts since before the 2016 presidential election. It has attracted increasing attention since the muddled aftermath of the 2020 election, in which many states flooded the Supreme Court with complaints about pandemic-era voting provisions.

Both Republicans and Democrats in the Arizona case asked the high court to decide if two voting policies, both implemented by Republicans, violate the state's laws against racially discriminatory voting practices. The first is a requirement that a ballot be thrown out if it was cast in a precinct other than the one matching the voter's home address. The second is a ban on "ballot harvesting," a practice in which third-party carriers collect absentee ballots and deliver them for counting.

These practices are racially discriminatory, the DNC argued, because they disproportionately affect the state's black, Latino, and Native American populations. The DNC called Arizona's out-of-precinct policy one of the "most punishing in the nation" and accused it of effectively disenfranchising more than 38,000 voters since 2008. The DNC added that the ballot-harvesting ban is "directly tied to racial discrimination" because a higher percentage of minorities in the state lack access to mail services, relying instead on third-party carriers to vote.

State Republicans and Arizona Attorney General Mark Brnovich countered that both policies still provide an equal opportunity for minorities to vote in other ways. Brnovich in his brief to the Supreme Court defended both policies as "commonsense election provisions" designed to protect voter integrity.

An Arizona district court ruled in favor of the Republican arguments. The 9th U.S. Circuit Court of Appeals last year reversed that decision, pointing out that it appeared as though both policies had resulted in lower turnout among minorities. The court accused state officials of locating approved precincts "counterintuitively" so that minority voters might easily make mistakes. It also observed that since about 80% of Arizonans vote by mail, banning ballot harvesting could cripple many disadvantaged communities' abilities to have their votes count.

When the Supreme Court accepted the case, the Trump administration threw its support behind Arizona Republicans with a brief stating that it does not think that either rule inherently promotes racial discrimination at the polls. When President Biden took office, his administration maintained that position. In a Tuesday letter to the court, however, Deputy Solicitor General Edwin Kneedler clarified that there are certain parts of former President Donald Trump's argument with which Biden disagrees.

Ten senators, led by Texas Sen. Ted Cruz, filed a brief in support of the Arizona Republicans. Cruz and the other senators warned that the 9th Circuit's ruling, if upheld by the Supreme Court, would jeopardize the legitimacy of voting laws across the country.

The senators added that for years, bipartisan groups have supported measures such as ballot-harvesting bans as positive voting laws. They pointed in particular to a commission headed up by former President Jimmy Carter and former Secretary of State James Baker that recommended that bans could "reduce the risks of fraud and abuse in absentee voting."

Voting rights became a hot-button issue in the wake of the 2020 election, with many Republicans both at the state and national level lining up behind Trump's allegations of widespread voter fraud. Several states and people brought cases before the Supreme Court, all of which it pushed off deciding on until after Biden's inauguration.

In a nonpartisan brief filed in December, the libertarian Cato Institute noted that a clear opinion from the Supreme Court could set a tone for future election disputes.

"This case presents an opportunity to make future elections cleaner and less litigious, with results that inspire greater public confidence," wrote Ilya Shapiro, publisher of the *Cato Supreme Court Review*.