



Supreme Court upholds Arizona voting laws in another blow to Voting Rights Act

Jon Ward

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The Supreme Court on Thursday issued a major decision on voting rights — rejecting claims by Democrats that Republicans in Arizona engaged in voter suppression — that will have significant implications for the ongoing debate over access to the ballot box.

The court's conservative majority ruled 6 to 3 in *Brnovich v. Democratic National Committee* that people who vote in the wrong precinct can have their ballots tossed out, and that restrictions on ballot collection, otherwise known as ballot harvesting, are not discriminatory.

It was the third significant decision on voting rights in the last 13 years by the court, along with the 2008 *Crawford v. Marion County* ruling and the 2013 *Shelby v. Holder* decision. All three have made it harder to prevent voter suppression, liberals argue, and easier for those in power to enact laws that erect obstacles to voting.

The impact of the three rulings, taken together, is that “the conservative Supreme Court has taken away all the major available tools for going after voting restrictions,” wrote Rick Hasen, an expert on election laws and the author of “Election Meltdown.” “This at a time when some Republican states are passing new restrictive voting laws.”

Others focused more narrowly on the merits of the case itself, arguing that the liberal justices should not have dissented. “This was a straightforward case that should’ve garnered no dissent: ballot-harvesting restrictions [and requirements] to vote in-precinct are commonplace, certainly among the ‘usual burdens of voting,’ as our legal understandings have long reflected,” Ilya Shapiro, a legal expert at the Cato Institute, tweeted Thursday.

Shapiro also noted that “a majority of states require in-precinct voting, and nearly half limit ballot collection.” And experts such as Hasen had agreed before the decision that the DNC’s decision to bring the case to court in Arizona was a mistake. “Democrats brought a suit here that many voting rights lawyers wish they wouldn’t have, because Arizona’s restrictions are relatively tame but [were] found violative of section 2 by the very liberal 9th Circuit,” he wrote on Wednesday.

For its part, the Republican National Committee called the ruling “a resounding victory for election integrity and the rule of law.”

The Brnovich decision will make it more difficult for the Justice Department to win a lawsuit it filed last week against the state of Georgia over its recently enacted election law. But the court did not gut a provision of the Voting Rights Act as some had feared.

Hasen said the ruling was not a “death blow” to Section 2 of the Voting Rights Act, which allows voters to seek relief if they believe the government “has denied or limited their voting rights on the basis of their race, color or membership in a language minority group.” But, Hasen said, the Brnovich ruling “will make it much, much harder for such challenges to succeed.”

The majority opinion by Justice Samuel Alito was a clear demonstration that the court’s conservative majority does not look sympathetically on claims of voter suppression.

“A State may take action to prevent election fraud without waiting for it to occur within its own borders,” Alito wrote.

The decision came after former President Donald Trump spent the last year spreading the lie that the American election system is “rigged,” and attempted to overturn his loss in the 2020 election by repeating the falsehood over and over. Republican legislatures have spent the last several months proposing and passing laws to restrict voting using the same logic employed by Alito — that they are proactively preventing fraud.

Meanwhile, in Congress, Republicans have shown little interest in supporting any form of a voting rights bill that would expand access, even if it included provisions such as a national voter ID standard, which Democrats have said they could support. And many Republicans also oppose renewing Section 5 of the Voting Rights Act, which was struck down in 2013 by the Shelby decision. Section 5 required states with a history of racist voter suppression, mostly in the South, to go through “pre-clearance” with the Justice Department before enacting changes to state election law.

Since the Shelby decision, Republican legislatures have passed a large number of laws restricting voting, as has been documented by groups like the Brennan Center for Justice, a voting rights organization based at New York University.

“Republicans are in a bad place, because I think they find themselves arguing, in essence, that there ought to be fewer voters, which is, in my view, wrong, and also the wrong place to be as a political matter,” Yuval Levin, a conservative scholar at the American Enterprise Institute, told Yahoo News earlier this year.

“It’s not good for the party to think that way. It should think, ‘How do we win more votes in a more diverse society?’ rather than, ‘How do we let fewer people vote in a more diverse society?’” he said. “And it’s not good for our democracy.”

It’s also relevant that the last 20 years have shown major elements of the GOP’s election integrity agenda — such as voter ID — to be largely a solution in search of a problem. Public support for voter ID is high, but at times Republican legislatures have used ID laws to advantage themselves politically.

In Texas, for example, the Legislature passed a law that allowed gun permits to be used for ID but disallowed student IDs, knowing that gun owners tend to vote Republican and college students tend to vote Democratic.

As for ballot collection, Arizona enacted a total ban. But some states allow people — usually family members or postal workers — to collect a certain number of ballots. This is the case in Colorado, where someone can deliver up to 10 ballots in an election for others.

This makes it easier for voters to cast their ballot but also prevents the possibility of large-scale, organized efforts to deliver ballots. The concern is that forged ballots could be delivered in large numbers, even though, once again, such crimes have not actually been found.

California has one of the most permissive ballot collection laws. There have been no cases of known fraud in California since the state Legislature passed a law in 2016 widening the range of people who can collect absentee or vote-by-mail ballots and turn them in for others. But the Los Angeles Times editorial board has called the law “overly permissive.”

“It was written without sufficient safeguards, and suspicions of abuse were inevitable,” the Times wrote after the 2018 midterm elections. “To reiterate: There’s absolutely no reason to suspect fraud in last month’s election — not through ‘ballot harvesting’ or in the large number of provisional ballots turned in or how long it took to count ballots. ...

“But the ballot collection law passed in [2016] *does* open the door to coercion and fraud and should be fixed or repealed before the next election.”