Syllabus

NOTE:

abridgement of the right . . . to vote on account of race or color." Sec-

processes," courts must consider the opportunities provided by a State's entire system of voting when assessing the burden imposed by

Syllabus

See, *e.g.*, *Guinn* v. *United States*, 238 U. S. 347, 360–365 (1915) (grandfather clause); *Myers* v. *Anderson*, 238 U. S. 368, 379–380 (1915) (same); *Lane* v. *Wilson*, 307 U. S. 268, 275–277 (1939) (registration scheme predicated on grandfather clause); *Smith*

abridge the right of any citizen of the United States to vote on account of race or color." 79 Stat. 437.

Unlike other provisions of the VRA, §2 attracted relatively little attention during the congressional debates[2] and was "little-used" for more than a decade after its passage.[3] But during the same period, this Court considered several cases involving "vote-dilution" claims asserted under the Equal Protection Clause of the Fourteenth Amendment. See *Whitcomb* v. *Chavis*, 403 U. S. 124 (1971); *Burns* v. *Richardson*, 384 U. S. 73 (1966); *Fortson* v. *Dorsey*, 379 U. S. 433 (1965). In these and later vote-dilution cases, plaintiffs claimed that features of legislative districting plans, including the configuration of legislative districts and the use of multi-member districts, diluted the ability of particular voters to affect the outcome of elections.

One Fourteenth Amendment vote-dilution case, *White* v. *Regester*, 412 U. S. 755 (1973), came to have outsized importance in the development of our VRA case law. In *White*, the Court affirmed a District Court's judgment that two multi-member electoral districts were "being used invidiously to cancel out or minimize the voting strength of racial groups." *Id.*, at 765. The Court explained what a vote-dilution plaintiff must prove, and the words the Court chose would later assume great importance in VRA §2 we0 Tc 0 Tw 23.2ise4 (.)]TJ mp69W

found that this evidence sufficed to prove the plaintiffs' claim. See *id.*, at 766–769. The decision in *White* predated *Washington* v. *Davis*, 426 U. S. 229 (1976), where the Court held that an equal-protection challenge to a facially neutral rule requires proof of discriminatory purpose or intent, *id.*, at 238–245, and the *White* opinion said nothing one way or the other about purpose or intent.

A few years later, the question whether a VRA §2 claim required discriminatory purpose or intent came before this Court in *Mobile* v. *Bolden*, 446 U. S. 55 (1980). The plurality opinion for four Justices concluded first that §2 of the VRA added nothing to the protections afforded by the Fifteenth Amendment. *Id.*, at 60–61. The plurality then observed that prior decisions "ha[d] made clear that action by a State that is racially neutral on its face violates the Fifteenth Amendment only if motivated by a discriminatory purpose." *Id.*, at 62. The obvious result of those premises was that facially neutral voting practices violate §2 only if motivated by a discriminatory purpose. The plurality read *White* as consistent with this requirement. *Bolden*, 446 U. S., at 68–70.

Shortly after *Bolden* was handed down, Congress amended §2 of the VRA. The oft-cited Report of the Senate Judiciary Committee accompanying the 1982 Amendment stated that the amendment's purpose was to repudiate *Bolden* and establish a new vote-dilution test based on what the Court had said in *White*. See S. Rep. No. 97–417, pp. 2, 15–16, 27. The bill that was initially passed by the House of Representatives included what is now §2(a). In place of the phrase "to deny or abridge the right . . . to vote on account of race or color," the amendment substituted "in a manner which *results in*

The House bill "originally passed . . . under a loose understanding that §2 would prohibit all discriminatory 'effects' of voting practices, and that intent would be 'irrelevant,'" but "[t]his version met stiff resistance in the Senate." *Mississippi Republican Executive Committee* v. *Brooks*, 469 U. S. 1002, 1010 (1984) (Rehnquist, J., dissenting) (quoting H. R. Rep. No. 97–227, at 29). The House and Senate compromised, and the final product included language proposed by Senator Dole. 469 U. S., at 1010–1011; S. Rep. No. 97–417, at 3–4; 128 Cong. Rec. 14131–14133 (1982) (Sen. Dole describing his amendment).

What is now §2(b) was added, and that provision sets out what must be shown to prove a §2 violation. It requires consideration of "the totality of circumstances" in each case and demands proof that "the political processes leading to nomination or election in the State or political subdivision are not *equally open* to participation" by members of a protected class "*in that its members have less opportunity* than other members of the electorate to participate in the political process and to elect representatives of-

n. 119.[4] These sparse results were presumably good news. They likely showed that the VRA and other efforts had achieved a large measure of success in combating the previously widespread practice of using such rules to hinder minority groups from voting.

This Court first construed the amended §2 in *Thornburg* v. *Gingles*, 478 U. S. 30 (1986)—another vote-dilution case. Justice Brennan's opinion for the Court set out three threshold requirements for proving a §2 vote-

fully disparate impact on the opportunities of minority voters to elect" representatives of their choice. *Id.*, at 872. The percentage of ballots invalidated under this policy was very small (0.15% of all ballots cast in 2016) and decreasing, and while the percentages were slightly higher for members of minority groups, the court found that this disparity "does not result in minorities having unequal access to the political process." *Ibid.* The court also found that the plaintiffs had not proved that the policy "causes minorities to show up to vote at the wrong precinct at rates higher than their non-minority counterparts," *id.*, at 873, and the court noted that the plaintiffs had not even challenged "the manner in which Arizona counties allocate and assign polling places or Arizona's requirement that voters re-register to vote when they move," *ibid.*

The District Court similarly found that the ballot-collection restriction is unlikely to "cause a meaningful inequality in the electoral opportunities of minorities." *Id.*, at 871. Rather, the court noted, the restriction applies equally to all voters and "does not impose burdens beyond those traditionally associated with voting." *Ibid.* The court observed that the plaintiffs had presented no records showing how many voters had previously relied on now-prohibited third-party ballot collectors and that the plaintiffs also h1.7 (s)c3ua-1.7 (t)8(b)3.6 (i)p 0 Td (-) d

In addition, the court noted, none of the individual voters called by the plaintiffs had even claimed that the ballot-collection restriction "would make it significantly more difficult to vote." *Id.*, at 871.

Finally, the court found that the ballot-collection law had

to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in

The key requirement is that the political processes leading to nomination and election (here, the process of voting) must be "equally open" to minority and non-minority groups alike, and the most relevant definition of the term "open," as used in §2(b), is "without restrictions as to who may participate," Random House Dictionary of the English Language 1008 (J. Stein ed. 1966), or "requiring no special status, identification, or permit for entry or participation," Webster's Third New International Dictionary 1579 (1976).

What §2(b) means by voting that is not "equally open" is further explained by this language: "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." The phrase "in that" is "used to specify the respect in which a statement is true."[10] Thus, equal openness and equal opportunity are not separate require-

C

One other important feature of §2(b) stands out. The provision requires consideration of "the totality of circumstances." Thus, any circumstance that has a logical bearing on whether voting is "equally open" and affords equal "opportunity" may be considered. We will not attempt to compile an exhaustive list, but several important circumstances should be mentioned.

1

1. First, the size of the burden imposed by a challenged voting rule is highly relevant. The concepts of "open[ness]" and "opportunity" connote the absence of obstacles and burdens that block or seriously hinder voting, and therefore the size of the burden imposed by a voting rule is important. After all, every voting rule imposes a burden of some sort. Voting takes time and, for almost everyone, some travel, even if only to a nearby mailbox. Casting a vote, whether by following the directions for using a voting machine or completing a paper ballot, requires compliance with certain rules. But because voting necessarily requires some effort and compliance with some rules, the concept of a voting system that is "equally open" and that furnishes an equal "opportunity" to cast a ballot must tolerate the "usual burdens of voting." *Crawford* v. *Marion County Election Bd.*, 553 U. S. 181, 198 (2008) (opinion of Stevens, J.). Mere incon-

2. For similar reasons, the degree to which a voting rule departs from what was standard practice when §2 was amended in 1982 is a relevant consideration. Because every voting rule imposes a burden of some sort, it is useful to have benchmarks with which the burdens imposed by a challenged rule can be compared. The burdens associated with the rules in widespread use when §2 was adopted are therefore 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. Therefore, it is relevant that in 1982 States typically required nearly all voters to cast their ballots in person on election day and allowed only narrow and tightly defined categories of voters to cast absentee ballots. See, *e.g.*, 17 N. Y. Elec. Law Ann. §8–100 *et seq.* (West 1978), §8–300 *et seq.* (in-person voting), §8–400 *et seq.* (limited-excuse absentee voting); Pa. Stat. Ann., Tit. 25, §3045 *et seq.* (Purdon 1963) (in-person voting), §3149.1 *et seq.* (limited-excuse absentee voting); see §3146.1 (Purdon Cum. Supp. 1993) (same); Ohio Rev. Code Ann. §3501.02 *et seq.* (Lexis 1972) (in-person voting), §3509.01 *et seq.* (limited-

other available means.

5. Finally, the strength of the state interests served by a challenged voting rule is also an important factor that must be taken into account. As noted, every voting rule imposes a burden of some sort, and therefore, in determining "based on the totality of circumstances" whether a rule goes too far, it is important to consider the reason for the rule. Rules that are supported by strong state interests are less likely to violate §2.

One strong and entirely legitimate state interest is the prevention of fraud. Fraud can affect the outcome of a close election, and fraudulent votes dilute the right of citizens to cast ballots that carry appropriate weight. Fraud can also undermine public confidence in the fairness of elections and the perceived legitimacy of the announced outcome.

Ensuring that every vote is cast freely, without intimidation or undue influence, is also a valid and important state interest. This interest helped to spur the adoption of what soon became standard practice in this country and in other democratic nations the world round: the use of private voting booths. See *Burson* v. *Freeman*, 504 U. S. 191, 202–205 (1992) (plurality opinion).

2

While the factors set out above are important, others considered by some lower courts are less helpful in a case like the ones at hand. First, it is important to keep in mind that the *Gingles* or "Senate" factors grew out of and were designed for use in vote-

like "majority vote requirements," "anti-single shot provisions,"[12] and a "candidate slating process."[13] See *Gingles*, 478 U. S., at 37 (internal quotation marks omitted). Factors two, six, and seven (which concern racially polarized voting, racially tinged campaign appeals, and the election of minority-group candidates), *ibid.*, have a bearing on whether a districting plan affects the opportunity of minority voters to elect their candidates of choice. But in cases involving neutral time, place, and manner rules, the only relevance of these and the remaining factors is to show that minority group members suffered discrimination in the past (factor one) and that effects of that discrimination persist (factor five). *Id.*, at 36–37. We do not suggest that these factors should be disregarded. After all, §2(b) requires consideration of "the totality of circumstances." But their relevance is much less direct.

We also do not find the disparate-impact model employed in Title VII and Fair Housing Act cases useful here. The text of the relevant provisions of Title VII and the Fair Housing Act differ from that of VRA §2, and it is not obvious why Congress would conform rules regulating voting to

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[12] Where voters are allowed to vote for multiple candidates in a race for multiple seats, single-shot voting is the practice of voting for only one candidate. "'"Single-shot voting enables a minority group to win some at-large seats if it concentrates its vote behind a limited number of candidates and if the vote of the majority is divided among a number of candidates."'" *Gingles*, 478 U. S., at 38–39, n. 5 (quoting *City of Rome* v. *United States*, 446 U. S. 156, 184, n. 19 (1980)); see also United States Commission on Civil Rights, The Voting Rights Act: Ten Years After 206–207 (1975).

[13] Slating has been described as "a process in which some influential non-

those regulating employment and housing. For example, we think it inappropriate to read §2 to impose a strict "necessity requirement" that would force States to demonstrate that their legitimate interests can be accomplished only by means of the voting regulations in question. Stephanopoulos, Disparate Impact, Unified Law, 128 Yale L. J. 1566, 1617–1619 (2019) (advocating such a requirement). Demanding such a tight fit would have the effect of invalidating a great many neutral voting regulations with long pedigrees that are reasonable means of pursuing legitimate interests. lIt would h

right to vote under §2 does not require outright denial of the right; that §2 does not demand proof of discriminatory purpose; and that a "facially neutral" law or practice may violate that provision. See *post*, at 12–20.

Only after this extended effort at misdirection is the dissent's aim finally unveiled: to undo as much as possible the compromise that was reached between the House and Senate when §2 was amended in 1982. Recall that the version originally passed by the House did not contain §2(b) and was thought to prohibit any voting practice that had "discriminatory effects," loosely defined. See *supra*, at 5–6. That is the freewheeling disparate-impact regime the dissent wants ( )11.r "m.3 (m)o(s)-6.4 (7 (on)2.9 ( )0.5 (t)-2.3 (h)2.e.8 (f)-1i (y11.r) ()6.t)-2.3 ()-1

it does its best to push aside all but one of the circumstances we discuss. It entirely rejects three of them: the size of the burden imposed by a challenged rule, see *post*, at 22–23, the landscape of voting rules both in 1982 and in the present, *post*, at 24–25,[15] and the availability of other ways to vote, *post*, at 23–24. Unable to bring itself to completely reject consideration of the state interests that a challenged rule serves, the dissent tries to diminish the significance of this circumstance as much as possible. See *post*, at 26–29. According to the dissent, an interest served by a voting rule, no matter how compelling, cannot support the rule unless a State can prove to the satisfaction of the courts that this interest could not be served by any other means. *Post*, at 17–18, 26–29. Such a requirement has no footing in the text of §2 or our precedent construing it.[16]

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[15] The dissent objects to consideration of the 1982 landscape because even rules that were prevalent at that time are invalid under §2 if they, well, violate §2. *Post*, at 24. We of course agree with that tautology. But the question is what it *means* to provide equal opportunity, and given that every voting rule impongs

That requirement also would have the potential to invalidate just about any voting rule a State adopts. Take the example of a State's interest in preventing voting fraud. Even if a State could point to a history of serious voting fraud within its own borders, the dissent would apparently strike down a rule designed to prevent fraud unless the State could demonstrate an inability to combat voting fraud in any other way, such as by hiring more investigators and prosecutors,d(u)4.ftin -2.654tes515n (w)-2voinfraito (n)15. (515n g4.6 3Tw 0 -7u)4.fti

provide online polling place locators with information available in English and Spanish. *Ibid.* Other groups offer similar online tools. *Ibid.* Voters may also identify their assigned polling place by calling the office of their respective county recorder. *Ibid.* And on election day, poll workers in at least some counties are trained to redirect voters who arrive at the wrong precinct. *Ibid*; see Tr. 1559, 1586; Tr. Exh. 370 (Pima Cour Aections

voters who voted on election day cast an out-of-precinct ballot. *Ibid.* For non-minority voters, the rate was around 0.5%. *Ibid.* (citing Tr. Exh. 97, at 3, 20–21). 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.

The Court of Appeals attempted to paint a different pict1 (a)1. (s)-2.4 (a)02,or88

compliance with the requirement that Arizonans who choose to vote in-person on election day do so at their assigned polling places. And as the District Court recognized, precinct-based voting furthers important state interests. It helps to distribute voters more evenly among polling places and thus reduces wait times. It can put polling places closer to voter residences than would a more centralized voting-center model. In addition, precinct-based voting helps to ensure that each voter receives a ballot that lists only the candidates and public questions on which he or she can vote, and this orderly administration tends to decrease voter confusion and increase voter confidence in elections. See 329 F. Supp. 3d, at 878. It is also significant that precinct-based voting has a long pedigree in the United States. See 948 F. 3d, at 1062–1063 (Bybee, J., dissenting) (citing J. Harris, Election Administration in the United States 206–207 (1934)). And the policy of not counting out-of-precinct ballots is widespread. See 948 F. 3d, at 1072–1088 (collecting and categorizing state laws).

The Court of Appeals discounted the State's interests because, in its view, there was no evidence that a less restrictive alternative would threaten the integrity of precinct-based voting. The court thought the State had no good reason for not counting an out-of-precinct voter's choices with respect to the candidates and issues also on the ballot in the voter's proper precinct. See *id*., at 1030–1031. We disagree with this reasoning.

Section 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. And the Court of Appeals' preferred alternative would have obvious disadvantages. Partially counting out-of-precinct ballots would complicate the process of tabulation and could lead to disputes and delay. In addition, as one of the en banc dissenters noted, it would tend to encourage voters who are primarily interested in only national or state-wide

elections to vote in whichever place is most convenient even if they know that it is not their assigned polling place. See *id.*, at 1065–1066 (opinion of Bybee, J.).

In light of the modest burdens allegedly imposed by Arizona's out-of-precinct policy, the small size of its disparate impact, and the State's justifications, we conclude the rule does not violate §2 of the VRA.

far more difficult to detect when citizens vote by mail," and it recommended that "States therefore should reduce the risks of fraud and abuse in absentee voting by prohibiting 'third-party' organizations, candidates, and political party activists from handling absentee ballots." *Ibid.* The Commission ultimately recommended that States limit the classes of persons who may handle absentee ballots to "the voter, an acknowledged family member, the U. S. Postal Service or other legitimate shipper, or election officials." *Id.*, at 47. HB 2023 is even more permissive in that it also authorizes ballot-handling by a voter's household member and caregiver. See Ariz. Rev. Stat. Ann. §16–1005(I)(2). Restrictions on ballot collection are also common in other States. See 948 F. 3d, at 1068–1069, 1088–1143 (Bybee, J., dissenting) (collecting state provisions).

The Court of Appeals thought that the State's justifications for HB 2023 were tenuous in large part because there was no evidence that fraud in connection with early ballots had occurred in Arizona. See *id.*, at 1045–1046. But prevention of fraud is not the only legitimate interest served by restrictions on ballot collection. As the Carter-Baker Commission recognized, third-party ballot collection can lead to pressure and intimidation. And it should go without saying that a State may take action to prevent election fraud without waiting for it to occur and be detected within its own borders. Section 2's command that the political processes remain equally open surely does not demand that "a State's political system sustain some level of damage before the legislature [can] take corrective action." *Munro* v. *Socialist Workers Party*, 479 U. S. 189, 195 (1986). Fraud is a real risk that accompanies mail-in voting even if Arizona had the good fortune to avoid it. Election fraud has had

was not, 329 F. Supp. 3d, at 882, and appellate review of that conclusion is for clear error, *Pullman-Standard* v. *Swint*, 456 U. S. 273, 287–288 (1982). If the district court's view of the evidence is plausible in light of the entire record, an appellate court may not reverse even if it is convinced that it would have weighed the evidence differently in the first instance. *Anderson* v. *Bessemer City*, 470 U. S. 564, 573–574 (1985). "Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *Id.*, at 574.

The District Court's finding on the question of discriminatory intent had ample support in the record. Applying the familiar approach outlined in *Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U. S. 252, 266–268 (1977), the District Court considered the historical background and the sequence of events leading to HB 2023's enactment; it looked for any departures from the normal legislative process; it considered relevant legislative history; and it weighed the law's impact on different racial groups. See 329 F. Supp. 3d, at 879.

The court noted, among other things, that HB 2023's enactment followed increased use of ballot collection as a Democratic get-out-the-vote strategy and came "on the heels of several prior efforts to restrict ballot collection, some of which were spearheaded by former Arizona State Senator Don Shooter." *Id.*, at 879. Shooter's own election in 2010 had been close and racially polarized. Aiming in part to frustrate the Democratic Party's get-out-the-vote strategy, Shooter made what the court termed "unfounded and often far-fetched allegations of ballot collection fraud." *Id.*, at 880. But what came after the airing of Shooter's claims and a "racially-tinged" video created by a private party was a serious legislative debate on the wisdom of

early mail-in voting. *Ibid.*[22]

That debate, the District Court concluded, was sincere and led to the passage of HB 2023 in 2016. Proponents of the bill repeatedly argued that mail-in ballots are more susceptible to fraud than in-person voting. *Ibid.* The bill found support from a few minority officials and organizations, one of which expressed concern that ballot collectors were taking advantage of elderly Latino voters. *Ibid.* And while some opponents of the bill accused Republican legislators of harboring racially discriminatory motives, that view was not uniform. See *ibid.* One Democratic state senator pithily described the "'problem'" HB 2023 aimed to "'solv[e]'" as the fact that "'one party is better at collecting ballots than the other one.'" *Id.*, at 882 (quoting Tr. Exh. 25, at 35).

We are more than satisfied that the District Court's interpretation of the evidence is permissible. The spark for the debate over mail-in voting may well have been provided by one Senator's enflamed partisanship, but partisan motives are not the same as racial motives. See *Cooper* v. *Harris*, 581 U. S. ___, ___–___ (2017) (slip op., at 19–20). The District Court noted that the voting preferences of members of a racial group may make the former look like the latter, but it carefully distinguished between the two. See 329 F. Supp. 3d, at 879, 882. And while the District Court recognized that the "racially-tinged" video helped spur the debate about ballot collection, it found no evidence that the legislature as a whole was imbued with racial motives. *Id.*, at 879–

Cite as:

SUPREME COURT OF THE UNITED STATES

Nos. 19–1257 and 19–1258

MARK BRNOVICH, ATTORNEY GENERAL OF ARIZONA, ET AL., PETITIONERS
19–1257 *v.*
DEMOCRATIC NATIONAL COMMITTEE, ET AL.

ARIZONA REPUBLICAN PARTY, ET AL., PETITIONERS
19–1258 *v.*
DEMOCRATIC NATIONAL COMMITTEE, ET AL.

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

[July 1, 2021]

JUSTICE KAGAN, with whom JUSTICE BREYER and JUSTICE SOTOMAYOR join, dissenting.

If a single statute represents the best of America, it is the Voting Rights Act. It marries two great ideals: democracy and racial equality. And it dedicates our country to carrying them out. Section 2, the provision at issue here, guarantees that members of every racial group will have equal voting opportunities. Citizens of every race will have the same shot to participate in the political process and to elect representatives of their choice. They will all own our democracy together—no one more and no one less than any other.

If a single statute reminds us of the worst of America, it is the Voting Rights Act. Because it was—and remains—so necessary. Because a century after the Civil War was

1855, on the precipice of the Civil War, only five States permitted African Americans to vote. *Id.*, at 55. And at the federal level, our Court's most deplorable holding made sure that no black people could enter the voting booth. See *Dred Scott* v. *Sandford*, 19 How. 393 (1857).

But the "American ideal of political equality . . . could not forever tolerate the limitation of the right to vote" to whites only. *Mobile* v. *Bolden*, 446 U. S. 55, 103–104 (1980) (Marshall, J., dissenting). And a civil war, dedicated to ensuring "government of the people, by the people, for the people," brought constitutional change. In 1870, after a hard-fought battle over ratification, the Fifteenth Amendment carried the Nation closer to its founding aspirations. "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." Those words promised to enfranchise millions of black citizens who only a decade earlier had been slaves. Frederick Douglass held that the Amendment "means that we are placed upon an equal footing with all other men"—that with the vote, "liberty is to be the right of all." 4 The Frederick Douglass Papers 270–271 (J. Blassingame & J. McKivigan eds. 1991). President Grant had seen much blood spilled in the Civil War; now he spoke of the fruits of that sacrifice. In a self-described "unusual" message to Congress, he heralded the Fifteenth Amendment as "a measure of grander importance than any other one act of the kind from the foundation of our free Government"—as "the most important event that has occurred since the nation came into life." Ulysses S. Grant, Message to the Senate and House of Representatives (Mar. 30, 1870), in 7 Compilation of the Messages and Papers of the Presidents 1789–1897, pp. 55–56 (J. Richardson ed. 1898).

Momentous as the Fifteenth Amendment was, celebration of its achievements soon proved premature. The Amendment's guarantees "quickly became dead letters in

much of the country." Foner, The Strange Career of the Reconstruction Amendments, 108 Yale L. J. 2003, 2007

some 600 protesters, led by future Congressman John Lewis, sought to cross the Edmund Pettus Bridge. State troopers in riot gear

C. Davidson eds. 1992). The crudest attempts to block voting access, like literacy tests and poll taxes, disappeared. Legislatures often replaced those vote denial schemes with new measures—mostly to do with districting—designed to dilute the impact of minority votes. But the Voting Rights Act, operating for decades at full strength, stopped many of those measures too. See, *e.g.*, *Chisom* v. *Roemer*, 501 U. S. 380 (1991); *Allen* v. *State Bd. of Elections*, 393 U. S. 544 (1969). As a famed dissent assessed the situation about a half-century after the statute's enactment: The Voting

same [effects], namely a diminishing of the minority community's ability to fully participate in the electoral process." H. R. Rep. No. 109–478, p. 6 (2006). Congress thus reauthorized the preclearance scheme for 25 years.

But this Court took a different view. Finding that "[o]ur country has changed," the Court saw only limited instances of voting discrimination—and so no further need for preclearance. *Shelby County*, 570 U. S., at 547–549, 557. Displacing Congress's contrary judgment, the Court struck down the coverage formula essential to the statute's operation. The legal analysis offered was perplexing: The Court based its decision on a "principle of equal [state] sovereignty" that a prior decision of ours had rejected—and that has not made an appearance since. *Id.*, at 544 (majority opinion); see *id.*, at 587–588 (Ginsburg, J., dissenting). Worse yet was the Court's blithe confidence in assessing what was needed and what was not. "[T]hings have changed dramatically," the Court reiterated, *id.*, at 547: The statute that was once a necessity had become an imposition. But how did the majority know there was nothing more for Section 5 to do—that the (undoubted) changes in the country went so far as to make the provision unnecessary? It didn't, as Justice Ginsburg explained in dissent. The majority's faith that discrimination was almost gone derived, at least in part, from the success of Section 5—from its record of blocking discriminatory voting schemes. Discarding Section 5 because those schemes had diminished was "like throwing away your umbrella in a rainstorm because you are not getting wet." *Id.*, at 590.

The rashness of the act soon became evident. Once Section 5's strictures came off, States and localities put in place new restrictive voting laws, with foreseeably adverse effects on minority voters. On the very day *Shelby County* issued, Texas announced that it would implement a strict voter-identification requirement that had failed to clear Section 5. See Elmendorf & Spencer, Administering Section 2 of

the Voting Rights Act After *Shelby County*, 115 Colum. L. Rev. 2143, 2145–2146 (2015). Other States—Alabama, Virginia, Mississippi—fell like dominoes, adopting measures similarly vulnerable to preclearance review. See *ibid*. The North Carolina Legislature, starting work the day after *Shelby County*, enacted a sweeping election bill eliminating same-day registration, forbidding out-of-precinct voting, and reducing early voting, including souls-to-the-polls Sundays. (That law went too far even without Section 5: A court struck it down because the State's legislators had a racially discriminatory purpose. *North Carolina State Conference of NAACP* v. *McCrory*, 831 F. 3d 204 (CA4 2016).) States and localities redistricted—drawing new boundary lines or replacing neighborhood-based seats with at-large seats—in ways guaranteed to reduce minority representation. See

laws. In recent months, State after State has taken up or enacted legislation erecting new barriers to voting. See Brennan Center for Justice, Voting Laws Roundup: May 2021 (online source archived at www.supremecourt.gov) (compiling legislation). Those laws shorten the time polls are open, both on Election Day and before. They impose

County, Section 2 is what voters have left.

II

Section 2, as drafted, is well-equipped to meet the challenge. Congress meant to eliminate all "discriminatory election systems or practices which operate, designedly or otherwise, to minimize or cancel out the voting strength and political effectiveness of minority groups." S. Rep. No. 97–417, p. 28 (1982) (S. Rep.). And that broad intent is manifest in the provision's broad text. As always, this Court's task is to read that language as Congress wrote it—to give the section all the scope and potency Congress drafted it to have. So I start by showing how Section 2's text requires courts to eradicate voting practices that make it harder for members of some races than of others to cast a vote, unless such a practice is necessary to support a strong state interest. I then show how far from that text the majority strays. Its analysis permits exactly the kind of vote suppression that Section 2, by its terms, rules . ( )0.7 -1.196.ly,yxteHp r.Tc 0 T
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> the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of [a given race] in that [those] members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." §10301(b).[3]

Those provisions have a great many words, and I address them further below. But their essential import is plain: Courts are to strike down H18(ic)-1.01.2 (ak)-2.9-2.3 (ia) (o)]TJ pfg3 (ia)1 r

voting right. And the "denial or abridgement" phrase speaks broadly too. "[A]bridgment necessarily means something more subtle and less drastic than the complete denial of the right to cast a ballot, denial being separately forbidden." *Bossier*, 528 U. S., at 359 (Souter, J., concurring in part and dissenting in part). It means to "curtail," rather than take away, the voting right. American Heritage Dictionary 4 (1969).

The "results in" language, connecting the covered voting .

"based on the totality of circumstances," a State's electoral system is "not equally open" to members of a racial group. And then the subsection tells us what that means. A system is not equally open if members of one race have "less opportunity" than others to cast votes, to participate in politics, or to elect representatives. The key demand, then, is for equal political opportunity across races.

That equal "opportunity" is absent when a law or practice makes it harder for members of one racial group, than for others, to cast ballots. When Congress amended Section 2, the word "opportunity" meant what it also does today: "a favorable or advantageous combination of circumstances" for some action. See American Heritage Dictionary, at 922. In using that word, Congress made clear that the Voting Rights Act does not demand equal outcomes. If members of different races have the same opportunity to vote, but go to the ballot box at different rates, then so be it—that is their preference, and Section 2 has nothing to say. But if a law produces different voting opportunities across races—if it establishes rules and conditions of political participation that are less favorable (or advantageous) for one racial group than for others—then Section 2 kicks in. It applies, in short, whenever the law makes it harder for citizens of

single out any race, but instead is facially neutral. Suppose, as Justice Scalia once did, that a county has a law limiting "voter registration [to] only three hours one day a week." *Chisom*, 501 U. S., at 408 (dissenting opinion). And suppose that policy makes it "more difficult for blacks to register than whites"—say, because the jobs African Americans disproportionately hold make it harder to take time off in that window. *Ibid.*

conditions. The classic historical cases are literacy tests and poll taxes. A more modern example is the one Justice Scalia gave, of limited registration hours. Congress knew how those laws worked: It saw that "inferior education, poor employment opportunities, and low incomes"—all conditions often correlated with race—could turn even an ordinary-seeming election rule into an effective barrier to minority voting in certain circumstances. *Thornburg* v. *Gingles*, 478 U. S. 30, 69 (1986) (plurality opinion). So Congress demanded, as this Court has recognized, "an intensely local appraisal" of a rule's impact—"a searching practical evaluation of the 'past and present reality.'" *Id.*, at 79; *De Grandy*, 512 U. S., at 1018 (quoting S. Rep., at 30). "The essence of a §2 claim," we have said, is that an election law "interacts with social and historical conditions" in a particular place to cauTw T*]2g

way. As we have put the point before: When a less racially biased law would not "significantly impair[] the State's interest," the discriminatory election rule must fall. *Houston Lawyers' Assn.*, 501 U. S., at 428.[5]

election rule, operating against the backdrop of historical, social, and economic conditions, makes it harder for minority citizens than for others to cast ballots. And strong state interests may save an otherwise discriminatory rule, but only if that rule is needed to achieve them—that is, only if a less dis

deny, minority citizens' voting rights. It declines to consider Congress's use of an effects test, rather than a purpose test, to assess the rules' legality. Nor does the majority acknowledge the force of Section 2's implementing provision. The majority says as little as possible about what it means for voting to be "equally open," or for voters to have an equal "opportunity" to cast a ballot. See *ante*, at 14–15. It only grudgingly accepts—and then apparently forgets—that the provision applies to facially neutral laws with discriminatory consequences. Compare *ante*, at 22, with *ante*, at 25. And it hints that as long as a voting system is sufficiently "open," it need not be equally so. See *ante*, at 16, 18. In sum, the majority skates over the strong words Congress drafted to accomplish its equally strong purpose: ensuring that minority citizens can access the electoral system as easily as whites.[7]

The majority instead founds its decision on a list of mostly made-up factors, at odds with Section 2 itself. To excuse this unusual free-form exercise, the majority notes

that Section 2 authorizes courts to conduct a "totality of circumstances" analysis. *Ante*, at 16. But as described above, Congress mainly added that language so that Section 2 could protect against "the demonstrated ingenuity of state

to vote (say, on Election Day; early in person; or by mail) may be more "open" than a State with only one (on Election Day). And some other statute might care about that. But Section 2 does not. What it cares about is that a State's "political processes" are "*equally* open" to voters of all races. And a State's electoral process is not equally open if, for example, the State "only" makes Election Day voting by members of one race peculiarly difficult. The House Report on Section 2 addresses that issue. It explains that an election system would violate Section 2 if minority citizens had a lesser opportunity than white citizens to use absentee ballots. See H. R. Rep., at 31, n. 106. Even if the minority citizens could just as easily vote in person, the scheme would "result in unequal access to the political process." *Id.*, at 31. That is not some piece of contestable legislative history. It is the only reading of Section 2 possible, given the statute's focus on equality. Maybe the majority does not mean to contest that proposition; its discussion of this supposed factor is short and cryptic. But if the majority does intend to excuse so much discrimination, it is wrong. Making one method of voting less available to minority citizens than to whites necessarily means giving the former "less

That leaves only the majority's discussion of state interests, which is again skewed so as to limit Section 2 liability. No doubt that under our precedent, a state interest in an election rule "is a legitimate factor to be considered." *Houston Lawyers' Assn.*, 501 U. S., at 426. But the majority wrongly dismisses the need for the closest possible fit between means and end—that is, between the terms of the rule and the State's asserted interest. *Ante*, at 21. In the past, this Court has stated that a discriminatory election rule must fall, no matter how weighty the interest claimed, if a less biased law would not "significantly impair[that] interest." *Houston Lawyers' Assn.*, 501 U. S., at 428; see *supra*, at 17–18, and n. 5. And as the majority concedes, we apply that kind of means-end standard in every other context—employm0.5 (,cd)-4 (l)8.6 (aw)4.2 (8.6 (a

State's Native American citizens need to travel long distances to use the mail. Both policies violate Section 2, on a straightforward application of its text. Considering the "totality of circumstances," both "result in" members of some races having "less opportunity than other members of the electorate to participate in the political process and to elect a representative of their choice." §10301(b). The majority reaches the opposite conclusion because it closes its eyes to the facts on the ground.[10]

A

Arizona's out-of-precinct policy requires discarding any Election Day ballot cast elsewhere than in a voter's assigned precinct. Under the policy, officials throw out every choice in every race—including national or statewide races (*e.g.*, for President or Governor) that appear identically on every precinct's ballot. The question is whether that policy unequally affects minority citizens' opportunity to cast a vote.

Although the majority portrays Arizona's use of the rule as "unremarkable," *ante*, at 26, the State is in fact a national aberration when it comes to discarding out-of-precinct ballots. In 2012, about 35,000 ballots across the country were thrown out because they were cast at the wrong precinct. See U. S. Election Assistance Commission, 2012 Election Administration and Voting Survey 53 (2013). Nearly one in three of those discarded votes—10,979—was cast in Arizona. *Id.*, at 52. As the

ante, at 27, but it is anything but. More recently, the number of discarded ballots in the State has gotten smaller: Arizona counties have increasingly abandoned precinct-based voting (in favor of county-wide "vote centers"), so the out-of-precinct rule has fewer votes to operate on. And the majority primarily relies on those latest (2016) numbers. But across the five elections at issulatulaai (th)4.39b1 -1.207 in

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See *Democratic Nat. Committee* v. *Reagan*, 329 F. Supp. 3d 824, 871 (Ariz. 2018); *supra*, at 15, n. 4.

The majority is wrong to assert that those statistics are "highly misleading." *Ante*, at 28. In the majority's view, they can be dismissed because the great mass of voters are unaffected by the out-of-precinct policy. See *ibid*. But Section 2 is less interested in "absolute terms" (as the majority calls them) than in relative ones. *Ante*, at 27; see *supra*, at 14–15. Arizona's policy creates a statistically significant disparity between minority and white voters: Because of the policy, members of different racial groups do not in fact have an equal likelihood of having their ballots counted. Suppose a State decided to throw out 1% of the Hispanic vote each election. Presumably, the majority would not approve the action just because 99% of the Hispanic vote is unaffected. Nor would the majority say that Hispanics in that system have an equal shot of casting an effective ballot. Here, the policy is not so overt; but under Section 2, that difference does not matter. Because the policy "results in" statistically significant inequality, it implicates Section 2. And the kind of inequality that the policy produces is not the kind only a statistician could see. A rule that throws out, each and every election, thousands of votes cast by minority citizens is a rule that can affect election outcomes. If you were a minority vote suppressor in Arizona or elsewhere, you would want that rule in your bag of tricks. You would not think it remotely irrelevant.

And the case against Arizona's policy grows only stronger the deeper one digs. The majority fails to conduct the "searching practical evaluation" of "past and present reality" that Section 2's "totality of circumstances" inquiry demands. *De* [illegible]

at a startling rate. Maricopa County (recall, Arizona's largest by far) changed 40% or more of polling places before both the 2008 and the 2012 elections. See 329 F. Supp. 3d, at 858 (noting also that changes "continued to occur in 2016"). In 2012 (the election with the best data), voters affected by those changes had an out-of-precinct voting rate that was 40% higher than other voters did. See *ibid*. And, critically, Maricopa's relocations hit minority voters harder than others. In 2012, the county moved polling stations in African American and Hispanic neighborhoods 30% more often than in white ones. See App. 110–111. The odds of those

Facts also undermine the State's asserted interests, which the majority hangs its hat on. A government inter-

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collection ban is just a "usual burden[ ] of voting" for everyone. *Ante*, at 30. And in that world, "[f]raud is a real risk" of ballot collection—as to every community, in every circumstance—just because the State in litigation asserts that it is. *Ante*, at 33. The State need not even show that the discriminatory rule it enacted is necessary to prevent the fraud it purports to fear. So the State has no duty to substitute a non-discriminatory rule that would adequately serve its professed goal. Like the rest of today's opinion, the majority's treatment of the collection ban thus flouts what Section 2 commands: the eradication of election rules resulting in unequal opportunities for minority voters.

IV

Congress enacted the Voting Rights Act to address a deep fault of our democracy—the historical and continuing attempt to withhold from a race of citizens their fair share of influence on the political process. For a century, African Americans had struggled and sacrificed to wrest their voting rights from a resistant Nation. The statute they and their allies at long last attained made a promise to all Americans. From then on, Congress demanded, the political process would be equally open to every citizen, regardless of race.

One does not hear much in the majority opinion about that promise. One does not hear much about what brought Congress to enact the Voting Rights Act, what Congress hoped for it to achieve, and what obstacles to that vision remain today. One would never guess that the Act is, as the President who signed it wrote, "monumental." Johnson Papers 841. For all the opinion reveals, the majority might

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analysis—and here produces a significant racial disparity in the opportunity to vote. The majority's argument to the contrary is no brao— netutotytot v g-7 ( )0-.7(mo-ii)-7 8.4( )0c .

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