

The Supreme Court - July 1, 2021

Today, the Supreme Court of the United States issued the following two decisions:

Brnovich v. Democratic National Committee, No. 19-1257: The Democratic National Committee and other affiliates brought a suit challenging two Arizona voting restrictions as violating §2 of the Voting Rights Act (“VRA”). Although Arizona allows all voters to vote by mail in person or for nearly a month before election day, 1) some counties required that voters casting a ballot in person on election day must vote in their own precinct or their ballot would not be counted; and 2) mail-in ballots cannot be collected by anyone other than an election official, a mail carrier, or a voter’s family member, household member, or caregiver. The District Court held a trial and rejected the VRA challenges, and also found the ballot-collection law had not been enacted with discriminatory intent. The Ninth Circuit reversed. Today, the Court in turn reversed, holding that Arizona’s challenged voting regulations do not violate §2 of the VRA, and that the District Court did not clearly err in finding that the legislature did not enact the ballot-collection law with a racially discriminatory purpose. The Court came to this conclusion after emphasizing that the core of what is required to show a violation of §2 of the VRA is the requirement that voting be “equally open,” and then identifying five important circumstances to be considered: 1) the size of the burden imposed by the rule; 2) the degree to which a voting rule departs from the standard practice when §2 was amended; 3) the size of any disparities in a rule’s impact on members of different racial or ethnic groups; 4) the opportunities provided by a State’s entire system of voting; and 5) the strength of the state interests served by the challenged rule, emphasizing the state’s legitimate interest in preventing fraud. Justice Alito issued the Court’s opinion, joined by Chief Justice Roberts, and Justices Thomas, Gorsuch, Kavanaugh, and Barrett. Justice Gorsuch also filed a concurring opinion, joined by Justice Thomas, noting that the Court’s cases have assumed without deciding that the VRA provides an implied cause of action under §2. Justice Kagan dissented, joined by Justices Breyer and Sotomayor, criticizing the Court for having “rewritten—in order to weaken—a statute that stands as a monument to America’s greatness, and protects against its basest impulses.”

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Americans for Prosperity Foundation v. Bonta, No. 19-251: California law requires that in order for a charity to operate and raise funds in the State, the charity must register with the State Attorney General, and include with its registration renewals copies of their Internal Revenue Service Form 990, including Schedule B, which includes names and addresses of major donors. The State contends this information makes it easier to police misconduct by charities. Petitioners Americans for Prosperity Foundation and Thomas More Law Center are charities that refused to file unredacted Schedule B's with the State, and when enforcement was threatened, brought a suit challenging the requirement on First Amendment grounds. The District Court permanently enjoined the Attorney General from collecting the Schedule B's under an exacting scrutiny standard. The Ninth Circuit reversed, holding that the District Court erred by imposing a narrow tailoring requirement and finding that the disclosure regime satisfied exacting scrutiny. The Court today reversed, holding that the Ninth Circuit erred by vacating the District Court's injunctions against the Attorney General collecting the petitioners' Schedule B's. Chief Justice Roberts delivered the Court's opinion, joined in full by Justices Kavanaugh and Barrett, which reasoned that an exacting scrutiny standard applied, and that standard requires that the disclosure regimes be narrowly tailored to the government's asserted interest, although unlike strict scrutiny, it does not require the disclosure regime to be the least restrictive means of achieving the government's ends. Justice Thomas partially joined the Court's opinion and also issued a separate concurrence, reaching the same conclusion that California's disclosure requirement violates the First Amendment, but reasoning, *inter alia*, that strict scrutiny should be the appropriate standard. Justice Alito, joined by Justice Gorsuch, partially joined the Court's opinion and also issued a separate concurrence, reasoning that because the California requirement fails under both exacting and strict scrutiny, there is no need to decide which level of scrutiny applies. Justice Sotomayor dissented, joined by Justices Breyer and Kagan, contending in major part that the Court's holding discards the requirement that proving a cognizable First Amendment burden on associational rights requires that a plaintiff plead and prove that disclosure will likely expose them to objective harms.

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