US Supreme Court poised to finish off Voting Rights Act

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In oral arguments held Tuesday, the right-wing majority of the US Supreme Court (six of the nine justices) displayed a level of contempt for the right to vote that has no modern parallel.

While the immediate legal questions at issue involve the interpretation of Section Two of the Voting Rights Act of 1965, the practical and political implications might be translated into everyday language as: does the US federal government still have the authority to prohibit racial discrimination in state election laws?

The cases under review—*Brnovich v. Democratic National Committee* and *Arizona Republican Party v. Democratic National Committee*—concern two racially discriminatory voting regulations in the state of Arizona, one of which invalidates any ballots cast "out of precinct" and another which criminalizes "ballot harvesting," a politically-charged title for the simple act of transporting another person's ballot to the appropriate polling station on their behalf.

While the Supreme Court will not make a ruling in the cases until May or June, the overall tenor of the oral arguments—given the core democratic right at issue—warrants some examination.

The laws in question emerged as part of the deluge of voter suppression measures following the high court's infamous 2013 *Shelby County* decision striking down a key provision of the Voting Rights Act. The proliferation of "voter fraud" initiatives has only swelled since Donald Trump's electoral defeat in November 2020. To this day, the former president and architect of the January 6 coup attempt maintains that the election was stolen through massive voter fraud, a false and unsupported conspiracy theory.

In 2016 the Arizona legislature made it a felony to collect and deliver another person's completed ballot, with very narrow exceptions, punishable by two years' imprisonment and a $150,000 fine. The law served to disenfranchise the state's American Indian population, only 18 percent of whom have access to regular mail services. Latino and African-American voters also make use of third-party ballot collectors more frequently than white voters, mainly because of greater poverty and social isolation.

Former Arizona state senator Don Shooter championed the measure. Shooter leads the fascistic Yuma County Tea Party. He made regular appeals during his tenure to anti-Latino racism, blaming demographic changes for improving election prospects for Democrats. He infamously appeared at one legislative meeting dressed as a Mexican mariachi performer, with a cigar in his mouth and a bottle of tequila in a holster. Shooter's racist proclivities formed part of the lower courts' records and are not in dispute.

Arizona's out-of-precinct policy serves the same discriminatory and anti-democratic ends. In its ruling below the US Court of Appeals for the 9th Circuit concluded that "Arizona election officials change voters' assigned polling places with unusual frequency" and that polling precincts are sometimes "located so counterintuitively that voters easily make mistakes."

Between 2012 and 2016 Maricopa County, home to more than 60 percent of Arizona's population, cut the number of polling places by 70 percent, with a disproportionate reduction in minority communities. Native Americans, Hispanics and African Americans in Arizona are twice as likely as whites to vote outside of the precinct to which they had been assigned.

In sum, both of the policies before the court bear the unmistakable marks of racially motivated voter suppression.

Obama appointees Elena Kagan and Sonya

Sotomayor posed some questions which had the general character of a warning that if Arizona's voting restrictions should survive, little would remain of America's tattered constitutional-democratic political framework.

The aging reactionary Clarence Thomas appeared unmoved by the ostensibly small number of disenfranchised voters, hinting that he might base his legal findings on a *de minimis* rationale—that the purported violation is too small to matter in the eyes of the law. (The legal notion comes the from Latin *de minimis non curat lex* which means "the law does not concern itself with trifles.") In Thomas' novel theory, thousands of suppressed votes are *literally* trifles.

Trump appointee Amy Coney Barrett also nodded at a *de minimis* rationale for upholding the Arizona laws in question. She hinted in one question that the appropriate legal standard might be to assess the discriminatory impact of the state's voting system as a whole rather than a particular measure. Such a legal standard—which would permit a dash of disenfranchisement here and there, now and then—would represent a departure from 40 years of legal precedent as well as an attack on the equal protection clause of the 14th Amendment to the US Constitution.

It is noteworthy that while justices openly debated how much voter suppression was too much, they never considered the question of whether voter fraud—the supposed pretext for the Arizona laws—exists at all. According to numerous studies, in-person vote fraud of the kind alleged incessantly by Republican Party officials is effectively nonexistent (truly *de minimis*).

For his part, Chief Justice John Roberts legitimized the "voter fraud" justification for banning third-party ballot collecting. More significantly he implied that evidence of discriminatory intent by a single state legislator might be insufficient in proving that a given election law had an illegal and racist motivation. Roberts even mentioned disgraced former Arizona state senator Don Shooter by name.

The most revealing words uttered at Tuesday's oral arguments came from George W. Bush appointee Samuel Alito, who asked the following question to the attorney for the Democratic National Committee:

"What concerns me is that your position is going to make every voting rule vulnerable to attack under Section 2 [of the VRA] to the same extent that the out-of-precinct policy is—was found to—violate Section 2 by the Ninth Circuit, *because people who are poor and less well educated on balance probably will find it more difficult to comply with just about every voting rule than do people who are more affluent and have had the benefit of more education* ." (Italics added.)

One might rephrase the question: if the Supreme Court follows controlling precedent in applying the Voting Rights Act to these discriminatory laws in Arizona, how can the ruling class reduce the presence of working class voters in elections and from the political process as a whole?

Just a few weeks ago and a few hundred feet away from the US Supreme Court building, a fascistic mob attacked the Capitol with the intent to overturn the November 2020 presidential election. Tuesday's ruminations in the Supreme Court—essentially on the issue of *how much* voter suppression is permissible—should serve as another warning that American democracy is on life support.