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ATTORNEY GENERAL RAOUL DEFENDS KEY PROVISION OF THE VOTING RIGHTS ACT BEFORE SUPREME COURT

Raoul, AGs Argue That Provision Removes Racial Barriers to Voting Without Infringing on State Sovereignty

Chicago — Attorney General Kwame Raoul joined a coalition of 18 attorneys general urging the U.S. Supreme Court to uphold a robust test for applying Section 2 of the Voting Rights Act (VRA), which prohibits policies and practices that interfere with citizens' right to vote based on their race.

Raoul and the coalition filed an amicus brief in Brnovich v. Democratic National Committee and Arizona Republican Party v. Democratic National Committee, two consolidated cases addressing Arizona laws that challengers allege make it harder to vote. Raoul and the coalition argue that the Supreme Court should maintain the existing test, which asks whether an election law denies voters of color an equal opportunity to participate in the political process, instead of narrowing it or striking down critical voting rights legislation.

"The laws in question deny individuals – particularly people of color – the right to vote, one of the most fundamental rights we have as Americans," Raoul said. "Every American, regardless of race, has a right to cast a ballot and have that ballot counted. I will continue to vigorously oppose any measure that serves to disenfranchise minority voters."

Section 2 of the Voting Rights Act prohibits any "qualification or prerequisite to voting" or "standard, practice, or procedure" that "results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." Since 1982, Section 2 has contained a discriminatory-results provision, which prohibits election laws or structures that create unequal opportunities for participation in the political process.

Two Arizona laws have been challenged because of the discriminatory results they produce. The first is an "out-of-precinct policy," under which provisional ballots cast in person are not counted if the voter, even inadvertently, cast the ballot outside their designated precinct. The second is a "ballot-collection" statute that prohibits so-called ballot harvesting and allows only certain individuals, such as family members, to collect and submit another person's completed early ballot. The 9th Circuit concluded that both laws produced a disparate impact on voters of color by creating unequal opportunities for political participation, and thus violated the VRA. The Arizona attorney general and the Arizona Republican Party are challenging the 9th Circuit's ruling in the Supreme Court. They argue that the 9th Circuit's standard would result in striking down all laws that impose even small differential effects on voters of different races.

Raoul and the coalition supporting the 9th Circuit's ruling filed an amicus brief defending the existing test for assessing VRA violations. Specifically, the states urge the Supreme Court to uphold the 9th Circuit's decision because:

- **Generally applicable election laws like Arizona's can violate Section 2 of the VRA:** Previous cases have demonstrated that seemingly "neutral, generally applicable election laws" can result in denial or abridgment of the vote to people of color. The Supreme Court has interpreted the text of the VRA to provide the broadest possible scope, extending to facially neutral and generally applicable laws.

- **The existing test incorporates a rigorous analysis that threatens only election laws operating to abridge or deny electoral opportunities:** The 9th Circuit's test, which is similar to those used by other courts, requires more than a disparate impact. Once a finding of disparate impact is made, the court engages in a more searching inquiry into whether electoral systems function to exclude minority voters. The plaintiff must demonstrate that the disparate burden denies voters of color equal opportunities to participate in the electoral process. This rigorous analysis provides a workable framework that gives states flexibility while preventing discrimination.

- **The two-part test is constitutional because it prevents and deters lawmakers from enacting discriminatory laws:** Intentional discrimination is very difficult to prove. The results test is important because it helps to weed out intentional discrimination and prevents future unconstitutional conduct by targeting the racially polarized conditions most likely to incentivize intentional discrimination in the regulation of elections.

Joining Raoul in filing the brief are the attorneys general of California, Colorado, Connecticut, the District of Columbia, Hawaii, Maine, Maryland, Massachusetts, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia and Washington.