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Supreme Court divided on Arizona voting rights case

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The Supreme Court on Tuesday was divided over a case pitting Republican election integrity efforts against Democratic charges of racially charged voter suppression.

The legal battle arose out of a long-running dispute between Arizona Republicans and the Democratic National Committee over Section 2 of the Voting Rights Act, which bans racial discrimination in voting procedures. The case became prominent after claims of voter fraud rocked the 2020 presidential election, with partisans on both sides calling for the court to signal clearly how it will handle future election law disputes.

Democratic complaints in the case focused on two state election laws that the party claimed are racist. The first law discounts ballots cast outside of a designated precinct. The second prohibits “ballot harvesting,” a practice by which third parties collect absentee ballots when voters are unable to mail them to the state. Both provisions were in play during the recent election, when Arizona, for decades a Republican stronghold, flipped Democratic.

The state Republican Party, joined by Arizona Attorney General Mark Brnovich, asked the court to reaffirm the laws, which the 9th U.S. Circuit Court of Appeals last year found to target racial minorities. Arguing for the state GOP, attorney Michael Carvin told Justice Clarence Thomas that while it was true that when the laws were in place, fewer minorities voted, that did not mean that the laws had necessarily held those groups back.

“The question is not the outcome,” he said, referencing the 9th Circuit’s ruling. “The question is the opportunity.”

Brnovich made similar arguments. He said that if left standing, the 9th Circuit’s decision, which relied heavily on statistics showing lower voter participation among Hispanics and Native Americans, would encourage legislators to inject racial conflict into every future election.

But Carvin and Brnovich diverged in their answers to a series of hypothetical situations presented by Justice Elena Kagan. Kagan set up a series of situations in which voters could be potentially be facing discrimination.

In one example, Kagan asked Carvin if it was racial discrimination to set up a voting precinct in a country club. Carvin answered that it probably was, saying that it gave them “less opportunity” to vote. But when Kagan put the same question to Brnovich, he said he would not agree — and added that he would probably disagree in some respect with every answer Carvin gave Kagan.

Commenting on Carvin’s answers to Kagan, Justice Amy Coney Barrett told the attorney that there appeared to be a number of “contradictions” in his position on the country club example.

Barrett suggested that Carvin had given up ground in his argument by conceding that the time, place, and manner of voting provisions could be said to restrict a racial group's ability to vote.

Carvin countered that the state in its actual laws had only laid out neutral restrictions, while the country club hypothetical was clearly racially charged.

The court pursued an equally hard line of questioning with the Arizona secretary of state's office and the Democratic National Committee, both of which urged it to uphold the 9th Circuit's ruling, especially in light of the 2020 election and the spate of election integrity bills state Republicans have introduced nationwide.

Chief Justice John Roberts in his questions pointed out that ballot harvesting, which is banned in many states, was singled out in a bipartisan commission led by President Jimmy Carter and former Secretary of State James Baker to be a leading cause of voter fraud. Roberts, along with other justices, repeatedly pressed Democratic attorneys on this question.

Justice Neil Gorsuch, referencing the same commission, pointed out that ballot-harvesting bans are not on their face racially discriminatory. Gorsuch also took issue with the secretary of state's contention that Arizona couldn't ban ballot harvesting because it had never been found to cause fraud in the state.

"Do Arizona have to wait for fraud to occur in Arizona using a practice before it can outlaw it?" Gorsuch asked.

When Jessica Amunson, the attorney representing the secretary of state, answered that it did not, Gorsuch pushed further, asking the question several times. Amunson responded that while the secretary of state believed laws preventing fraud were legitimate, penalizing ballot harvesting, which she termed as "neighbors helping neighbors," was beyond the pale.

When the Supreme Court accepted the case last year, the Trump administration threw its support behind the Arizona Republicans. President Biden maintained that position when he took office, with some modifications.

Voting rights became a hot-button issue after the 2020 election, with many Republicans both at the state and national level lining up behind former President Donald Trump's allegations of widespread voter fraud. Several states and people brought cases before the Supreme Court, all of which it pushed off deciding until after Biden's inauguration. The court last week tossed a majority of those cases.

In a brief filed in December, the libertarian Cato Institute noted that a clear opinion from the Supreme Court could set a tone for future election disputes.

"This case presents an opportunity to make future elections cleaner and less litigious, with results that inspire greater public confidence," wrote Ilya Shapiro, publisher of the *Cato Supreme Court Review*.