

BATTLEGROUND STATE LITIGATION: ARIZONA

Roy Herrera is a Phoenix-based member of Ballard Spahr's Government Relations and Public Policy and White Collar Defense/Internal Investigations groups. Before joining the firm, he served as an Assistant U.S. Attorney for the U.S. Department of Justice and on the legislative staff of former U.S. Representative Ed Pastor of Arizona. Here, he spoke about the election litigation matters he's handled in Arizona and whether the behavior of Latino voters this election cycle is a bellwether for elections to come.

First, congratulations on your win at the Arizona Supreme Court. How would you describe that matter?

“We have represented the Biden campaign as election counsel in Arizona for several months. Since the election, we have seen a total of seven lawsuits in the state. Those lawsuits have all been brought by the Trump campaign or the Arizona Republican party of their allies, and they have generally challenged the way that we count votes here, or our overall election procedures. In all of them, we have won. We have either won after a trial, or have won by getting our motions to dismiss granted, or have won when the plaintiffs withdrew their suit. This particular lawsuit was a challenge to Arizona certifying its election results for Biden. We won after a trial on Thursday and Friday of last week.”

You've been involved in Arizona politics for almost your whole career. Did the spate of litigation following the election come as a surprise?

“It wasn't a surprise in that the Biden legal team, nationally and in the swing states, had been preparing for months for the possibility that there would be lawsuits, in particular ones challenging early voting and voting by mail. So, we'd been preparing for

a long time. What was something of a surprise was the amount. Seven lawsuits was more than we were thinking. And the lack of merit in these cases was surprising.”

So, you're 7-0 on behalf of the Biden campaign, and none of these lawsuits have panned out the way plaintiffs had hoped. What do you take from that?

“Nationwide, there has been an unprecedented amount of election litigation, and when I say unprecedented, I really mean that. I've been doing election work for a long time, and we've never seen this – especially with regard to litigation lacking evidence. They've been borderline frivolous, I would say. If there's one thing you can take from this, it's that we generally have

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“I’d like to believe that we won’t see this happen again. I’d like to believe that this isn’t the start of a trend. Whether that’s the case depends on whether there will be any repercussions for the attorneys who brought these lawsuits. If attorneys’ fees aren’t awarded, or bar associations don’t take action, there will continue to be an incentive to bring this kind of lawsuits. If that doesn’t happen, I think we might start to see this after elections, maybe even every time.”

“We’re facing this era of extreme partisanship, which is unfortunate, and I think it’s just going to grow. Each side continues to use litigation

to protect their interests. I think that’s going to be the new normal. If each side is using litigation to protect its interest and is doing so in good faith, then certainly, that’s what you’re allowed to do under our system of law. If what you’re trying to do is use litigation to undermine the underpinnings of our democracy, like calling into question whether we have free and fair elections, that’s not so good. We don’t have to agree on all things, but we should all at least agree that we have a robust election process.”

A lot of attention was paid to Latino voters this election cycle, in particular how more supported Republicans than some people expected. You’re regarded as an

authority on the ways Latino voters behave politically. What’s your take on the 2020 Latino vote?

“What I take from that, and this has been said many times and I believe it, is that the Latino community is not a monolith. There are many communities within the larger Latino community, and they have different goals, different ideals, different loyalties. If you’re a candidate and you’re seeking Latino support, you’re going to have to be more specific about whom you’re asking and what you’re asking for. One size doesn’t fit all. You can’t assume that you’re going to get Latinos across the board with one message. You’re going to need more than one message.”