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ATTORNEY GENERAL RAOUL URGES SUPREME COURT TO PROTECT EMPLOYEES AND CONSUMERS IN PENDING ARBITRATION CASES

Raoul Asks Court to Prevent Companies From Dragging Cases Out, Then Seeking to Compel Arbitration in the Event of Unfavorable Outcomes

Chicago — Attorney General Kwame Raoul, as part of a bipartisan coalition of 19 attorneys general from across the country, today urged the U.S. Supreme Court to protect employees and consumers from corporate gamesmanship. Raoul and the bipartisan coalition filed an amicus brief asking the court to ensure that in cases when plaintiffs are employees or consumers bound by arbitration agreements, companies cannot strategically defend cases in court for months – sometimes dragging them out for years in an effort to drain plaintiffs' resources – then seek arbitration if their court strategy is unsuccessful.

"Far too often, arbitration clauses in employment and consumer contracts are hidden from employees and consumers and allow corporations to shirk responsibility for wrongdoing," Raoul said. "Some courts, however, have allowed companies to enforce their arbitration agreements even after many months or years of court litigation. I joined this bipartisan coalition because arbitration agreements must operate in harmony with state law and prevent corporate gamesmanship at the expense of workers and our residents."

The case in which Attorney General Raoul and the bipartisan coalition of attorneys general intervened, Morgan v. Sundance, Inc., arises from the experience of Robyn Morgan, a former employee of a Taco Bell in Osceola, Iowa. Ms. Morgan alleged that her former employer, Sundance, Inc., the owner of 150 Taco Bell franchises in multiple states, failed to pay her for all the hours she worked, including both regular and overtime hours. She also alleged that this failure to pay her wages was part of her employer's business model and that her employer knew or should have known that it was unlawful. Sundance denied Ms. Morgan's claims. Ms. Morgan sued her former employer in federal district court, where her suit was litigated for eight months before Sundance disclosed the existence of an arbitration agreement in her employment contract and attempted to exercise it. It is unclear whether Ms. Morgan was previously aware of the existence of the arbitration agreement or of having consented to it.

In the brief, Raoul and the coalition ask the Supreme Court to find that state contract law governs the issue of "waiver" under the Federal Arbitration Act. In most cases, general state contract law would require defendants in litigation to assert a right to arbitration in a timely manner, or else it is deemed waived. The coalition asks the Supreme Court to rule that federal courts may not impose an additional requirement that plaintiffs be prejudiced by the untimely assertion of arbitration before the right to arbitrate is deemed waived.

"Amici States seek to protect their residents from the otherwise unnecessary litigation expenses and delays that result when parties engage in such gamesmanship," the multistate coalition writes. "Such abuses not only impose increased litigation costs on employees and consumers; they also waste judicial resources and frustrate a 'prime objective' of arbitration, which is to achieve streamlined proceedings and expeditious results."

Joining Attorney General Raoul in today's brief are the attorneys general of Alaska, Colorado, Delaware, the District of Columbia, Idaho, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, North Carolina, Oregon, Rhode Island, Vermont, Virginia, and Washington.