

January 29, 2020

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Mr. David J. Smith
Clerk of Court
U.S. Court of Appeals for the 11th Circuit
56 Forsyth St., N.W.
Atlanta, Georgia 30303

RE: *Nancy Jacobson, et al. v. Fla. Sec’y of State, et al.*, No. 19-14552

Dear Mr. Smith:

Pursuant to Rule 28(j), Appellees respectfully submit the attached Memorandum Opinion issued on January 27, 2020 in *Democratic National Committee v. Hobbs*, No. 18-15845 (9th Cir. Jan. 27, 2020) (en banc). See Exhibit A.

In *Hobbs*, the Democratic National Committee (“DNC”) and DSCC were among several plaintiffs that brought suit challenging two state election laws based on injuries suffered by the Democratic Party and its voters as a result of the implementation of those laws. The Ninth Circuit found, en banc, that both challenged laws violated the Voting Rights Act (“VRA”).

Although the case presently before this Court does not involve claims brought under the VRA, the decision in *Hobbs* is of relevance to the Appellants’ argument that *Common Cause v. Rucho*, 139 S. Ct. 2484 (2019), renders non-justiciable cases that challenge election laws that have a partisan motivation or impact. One of the laws at issue in *Hobbs* was an Arizona law that prohibited collection and delivery of voted absentee ballots. The Ninth Circuit’s conclusion that the ballot collection law was unlawful repeatedly recognized that it was enacted in large part to further partisan interests. See, e.g., slip op. at 23 (noting district court found Republican Party, unlike Democratic Party, had not significantly engaged in ballot collection as a get out the vote (“GOTV”) strategy, and that ballot collection had traditionally been predominately used to enable voters who were not part of Republican base to vote by absentee ballot); *id.* at 83 (same); see also *id.* at 25 (finding “Democrats and Hispanic leaders have seen reason to favor [ballot collection], Republicans have not”); *id.* at 27 (finding Republican sponsor of similar legislation was motivated at least in part “by a desire to eliminate what had become an effective Democratic GOTV strategy”).

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The opinion was issued by a divided court after the Supreme Court issued its decision in *Rucho*, however, neither the majority nor the dissents evidenced any concern that the challenge to the law was nonjusticiable because of its partisan motivation or effect.

Very truly yours,



Marc E. Elias

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the attached document with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system on January 28, 2020. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Michelle DePass