

# HOLTZMAN VOGEL JOSEFIAK TORCHINSKY PLLC

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January 30, 2020

Mr. David J. Smith  
The Clerk of the United States Court of Appeals  
Eleventh Circuit  
56 Forsyth St., N.W.  
Atlanta, Georgia 30303

Re: Notice of Supplemental Authority in *Jacobson, et al. v. Florida Sec’y of State, et al.*, No. 19-14552 (11th Cir. Nov. 18, 2019) (oral argument scheduled for Feb. 12, 2020).

Dear Mr. Smith,

I write on behalf of Appellants, the NRSC and RGA, in response to Appellees’ Notice of Supplemental Authority. Democratic Appellees now disturb the regular briefing process with one additional authority that, to put it charitably, is wholly irrelevant to the question before the Court. This Court should not fall prey to Democratic Appellees’ machinations.

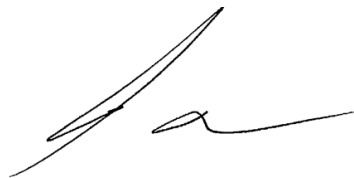
*Hobbs*’ holding has nothing to do with partisanship *qua* partisanship—*nothing*. Instead, *Hobbs* involves claims arising under Section 2 of the VRA due to the alleged *discriminatory racial impact* on several minority groups with respect to out-of-precinct voting and ballot harvesting. *See DNC v. Hobbs*, No. 18-15845, 9 (9th Cir. 2020) (*en banc*) (Appellees App. A). As this Court need not be reminded, racial minorities are a protected class under the Constitution. *Thornburg v. Gingles*, 478 U.S. 30, 43 (1986). To our knowledge, membership in the Democratic party is not thus protected. *See Rucho v. Common Cause*, 139 S. Ct. 2484, 2497 (2019). As a result, there was no need for the *Hobbs* court to consider the impact of *Rucho* on subject matter jurisdiction. By contrast, this case raises no racial issues at all.

Unlike *Hobbs*, *Rucho* is applicable to Democratic Appellees’ lack of subject matter jurisdiction here because they are alleging a statewide *partisan* harm with no judicially manageable standards whatsoever. *See Secretary’s Br.* at 34-38; NRSC & RGA’s Br. at 33-36. This is partially evidenced by the fact that Democratic

Appellees are attempting to use political science predictions about the future outcomes of statewide elections to assess partisan impact—a methodology wholly disclaimed in *Gill v. Whitford*, 138 S.Ct. 1916, 1931 (2018). Moreover, Appellees’ principal “evidence” uses the outcome of certain elections in California and Ohio to assess past and future outcomes of elections in Florida. *See* NRSC & RGA’s Br. at 42-43.

This Court should therefore disregard the *Hobbs* opinion as inapplicable here.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Torchinsky". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jason Torchinsky  
Counsel of Record

Cc: All Counsel

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served with the Clerk of Court for the United States Court of Appeals for the Eleventh Circuit using the CM/ECF system on this 30th day of January 2020.

/s/ Jason B. Torchinsky

Jason Torchinsky

Attorney for *Intervenors-Appellants*