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17 *Attorneys for Defendant Arizona Secretary*
18 *of State Katie Hobbs*

19 **IN THE UNITED STATES DISTRICT COURT**
20 **FOR THE DISTRICT OF ARIZONA**

21 Brian Mecinas, et al.,
22
23 Plaintiffs,
24 v.
25 Katie Hobbs, in her official capacity as
26 Arizona Secretary of State,
27
28 Defendant.

Case No: CV-19-05547-PHX-DJH

**ARIZONA SECRETARY OF STATE’S
NOTICE OF SUPPLEMENTAL
AUTHORITY**

1 Arizona Secretary of State Katie Hobbs (the “Secretary”) respectfully submits this
2 notice of the opinion issued by the Eleventh Circuit Court of Appeals in *Jacobson, et al.*
3 *v. Florida Sec. of State, et al.*, No. 19–14552, on April 29, 2020 (attached as Exhibit A),
4 which supports the Secretary’s arguments regarding standing, as set forth in the
5 Secretary’s motion to dismiss and the Secretary’s reply in support of the motion to
6 dismiss. (*See* Doc. 26 at 10–16 & Doc. 34 at 3–8.)

7 In *Jacobson*, the Eleventh Circuit held that the individual voters and the same
8 Democratic organizations that are the Plaintiffs in this case lack standing to challenge
9 Florida’s law governing the order in which candidates’ names appear on the ballot in
10 Florida’s general elections. *See* Ex. A at 2. Specifically, the Eleventh Circuit
11 unanimously held that none of the plaintiffs “proved an injury in fact,” and the majority
12 held that “any injury [the plaintiffs] might suffer is neither fairly traceable to the
13 Secretary nor redressable by a judgment against her because she does not enforce the
14 challenged law.” *Id.*; *see also id.* at 66–95 (Pryor, J., concurring in the holding that
15 plaintiffs failed to prove an injury in fact, but not joining in the majority’s “alternative
16 holdings on traceability and redressability”). Instead—like the Arizona law at issue here,
17 *see* A.R.S. §§ 16–405 and –503—county officials “are responsible for placing candidates
18 on the ballot in the order the law prescribes.” *Id.* at 2.

19 Accordingly, the Eleventh Circuit held that the district court’s “advisory opinion”
20 on the merits of the case, when it had no case or controversy before it, was “beyond the
21 power of federal courts” and that the district court therefore “erred by reaching the merits
22 and entering an injunction against nonparties whom it had no authority to enjoin.” *Id.* at
23 37.

24 Judge William Pryor’s concurrence supports the Secretary’s argument (*see* Doc.
25 26 at 18–21, Doc. 34 at 8–10) regarding non-justiciability under *Rucho v. Common*
26 *Cause*, 139 S. Ct. 2484 (2019). *Id.* at 38 (“In addition to the voters’ and organizations’
27 lack of standing, this lawsuit suffers from another fatal jurisdictional defect: it presents a
28 nonjusticiable political question” because the plaintiffs’ claims alleging an “unfair

1 partisan advantage based on the order in which candidates appear on the ballot bear all
2 the hallmarks of a political question under ... *Rucho*”) (Pryor, J., concurring). Judge
3 Pryor rejected plaintiffs’ attempts to distinguish *Rucho* from the plaintiffs’ ballot order
4 claim (*id.* at 38–60), and rejected plaintiffs’ argument (as Plaintiffs contend here, *see*
5 Doc. 27 at 8) that the Supreme Court’s summary affirmance in *Mann v. Powell*, 398 U.S.
6 955 (1970) (mem.), established that their complaint is justiciable. *Id.* at 61 (Pryor, J.,
7 concurring). Judge Pryor explained, “[n]ot only is *Mann* a nonprecedential drive-by
8 ruling on the issue of justiciability, but it also provides no basis to conclude that the
9 Supreme Court has ever adjudicated a complaint based on the partisan effects of ballot
10 order.” *Id.* (Pryor, J., concurring).

11 Respectfully submitted this 29th day of April, 2020.

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