

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

S.P.S., *ex rel.* SHORT, *et al.*,

Plaintiffs,

v.

BRAD RAFFENSPERGER, *et al.*,

Defendants.

CIVIL ACTION NO.  
1:19-CV-04960-AT

**PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY**  
**IN SUPPORT OF RESPONSE IN OPPOSITION TO**  
**DEFENDANTS' MOTION TO DISMISS**

In support of their Response in Opposition to Defendants' Motion to Dismiss (Doc. 41), Plaintiffs 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"), DSCC, and Arizona Democratic Party were among several plaintiffs that brought suit challenging two Arizona 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 of 1965 as amended ("VRA").

Although the case presently before this Court does not involve claims brought under the VRA, the decision in *Hobbs* is relevant to Defendants' argument that

*Common Cause v. Rucho*, 139 S. Ct. 2484 (2019), renders nonjusticiable cases that challenge election laws that “involve[] a question of fairness between political parties.” Dfs.’ Br. in Supp. of Their Mot. to Dismiss Pls.’ First Am. Cmplt. (Doc. 37-1) at 13 n.8; *see also* Doc. 41 at 13–15.

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 unfair to one political party, and beneficial to another. *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 traditionally ballot collection had 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”).

The opinion was issued by a divided Ninth Circuit en banc court seven months to the day after the Supreme Court issued its decision in *Rucho*. Neither the majority nor the dissents, however, evidenced any concern that the challenge to the law was nonjusticiable because it involved a question of whether a law benefitted or burdened one particular political party over another. The partisan ramifications of the law were

simply another feature of the law, one that in no way hindered the court's ability to evaluate and decide the partisan plaintiffs' claims on the merits.

Dated: January 29, 2020

Respectfully submitted,

**Adam M. Sparks**

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing has been prepared in accordance with the font type and margin requirements of L.R. 5.1, using font type of Times New Roman and a point size of 14.

Dated: January 29, 2020

**Adam M. Sparks**  
*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on January 29, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

Dated: January 29, 2020

**Adam M. Sparks**  
*Counsel for Plaintiffs*