

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:26-CR-20128- BECERRA

UNITED STATES OF AMERICA

v.

WILNER RENAUD,

Defendant.

**DEFENDANT’S REPLY IN SUPPORT
OF NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendant, Wilner Renaud, by and through undersigned counsel, respectfully submits his Reply in support of his Notice of Supplemental Authority, (ECF No. 52).

INTRODUCTION

The Government’s response to the *Amicus Curiae*’s memorandum rests on a single pillar: *Oregon v. Mitchell*, 400 U.S. 112 (1970). But that pillar cannot bear the weight the Government places on it. Justice Scalia himself characterized *Mitchell* as having “minimal precedential value.” *Arizona v. Inter Tribal Council of Arizona, Inc. (ITCA)*, 570 U.S. 1, 16 n.8 (2013). Despite the Government’s insistence that *Mitchell* “remains the Supreme Court’s definitive case concerning Congress’s power to regulate who may vote in federal elections,” (ECF No. 56 at 1), the decision lacks a majority rationale, and the Court’s most recent and considered treatment of the issue in *ITCA* demonstrates that Congress is not empowered to overstep the States to set voter qualifications.

I. MITCHELL LACKS A MAJORITY RATIONALE AND IS NOT CONTROLLING

The Government overstates *Mitchell*'s binding effect. As this Court is aware, *Oregon v. Mitchell* was a plurality opinion. Justice Black alone relied on the Elections and Necessary and Proper Clauses to find that Congress may mandate States to permit 18-year-olds to vote in federal elections, and no other Justice joined that view. As Judge Rosenbaum recently explained,

[Justice Black's] view, which runs counter to the text, structure, and history of the Constitution, did not receive any traction from the rest of the Court then. *See [Mitchell, 400 U.S.,]* at 135 (Douglas, J., concurring in part and dissenting in part) ("I dissent from the judgments of the Court insofar as they declare § 302 of the Voting Rights Act unconstitutional as applied to state elections and concur in the judgments as they affect federal elections, but for different reasons. I rely on the Equal Protection Clause and on the Privileges and Immunities Clause of the Fourteenth Amendment.") (internal citation omitted); *id.* at 231 (Brennan, J., concurring in part and dissenting in part) ("congressional power to enact the challenged Amendments is found in the enforcement clauses of the Fourteenth and Fifteenth Amendments."); *id.* at 212 (Harlan, J., concurring in part and dissenting in part) ("Any shadow of a justification for congressional power with respect to congressional elections therefore disappears utterly in presidential elections."); *id.* at 285–86 (Stewart, J., concurring in part and dissenting in part) (relying on the power to protect the privileges or immunities of citizenship to uphold a congressional regulation of residency requirements for voting in presidential elections). Nor has it since. *Cf. Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 16 n.8 (2013) (concluding *Mitchell*, "which lacked a majority rationale, is of minimal precedential value" and rejecting Justice Black's view of Congress's authority to set qualifications for federal elections). After all, "Article II, § 1's appointments power gives the States far reaching authority over presidential electors, absent some other constitutional constraint." *Chiafalo [v. Washington]*, 591 U.S. 578, 588–89 (2020).

Georgia v. Shafer, 119 F.4th 1317, 1325 n. 5 (11th Cir. 2024) (Rosenbaum, J. concurring).

To be sure, it is true that "[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those members who concurred in the judgments on the narrowest grounds." *Marks v. United States*, 430 U.S. 188, 193 (1977). However, that rule cannot save *Mitchell* as

controlling here because (as even the Government concedes in its papers) there is no identifiable “narrowest grounds” among *Mitchell*’s concurring opinions. *See* (ECF No. 56 at 9).

In fact, the Government’s own authority undercuts its position. While the Government relies on *Myrick v. Freuhauf Corp.*, 13 F.3d 1516 (11th Cir. 1994), to support its argument that Justice Black’s opinion is binding, that case actually supports the opposite. In *Myrick*, the Eleventh Circuit reiterated that it is well established law that “[a] plurality opinion is not binding on this Court” *Id.* at 1523 (quoting *Foster v. Board of School Comm’rs*, 872 F.2d 1563, 1569–70 (11th Cir.1989)). Rather, the Eleventh Circuit has observed that plurality opinions are persuasive authority and have the effect of precluding “lower courts from reaching results at odds with *a narrow reading* of the question before the [C]ourt.” *Barbour v. Haley*, 471 F.3d 1222, 1229 (11th Cir. 2006) (quoting *Horton v. Zant*, 941 F.2d 1449, 1464 n. 32 (11th Cir.1991) (emphasis added)).

The Government misstates *Mitchell*’s holding, stretching it far beyond any narrow reading of the question before the Court or of the Court’s judgment. The Government self-servingly paraphrases *Mitchell*’s judgment as stating, “that Congress may set voter qualifications in federal but not state elections.” (ECF No. 56 at 9). This representation far exceeds the Court’s characterizations of its own holding. Indeed, Justice Black characterized his own judgment as follows: “it is the judgment of the Court that the 18-year-old vote provisions of the Voting Rights Act Amendments of 1970 are constitutional and enforceable insofar as they pertain to federal elections and unconstitutional and unenforceable insofar as they pertain to state and local elections.” *Mitchell*, 400 U.S. at 118. Justice Scalia similarly identified *Mitchell*’s judgment, not as vesting Congress with a general ability to set voter qualifications, but “that Congress could compel the States to permit 18-year-olds to vote in federal elections.” *ITCA*, 570 U.S. at 16 n.8.

Thus, to the extent *Mitchell*'s judgment—that Congress could compel the States to permit 18-year-olds to vote in federal elections—is binding authority, that narrow, fact-bound result does not establish that Congress possesses limitless authority to prescribe any voter qualification it chooses for federal elections. As such, *Mitchell* is not controlling to this fact pattern.

II. THE COURT SHOULD FOLLOW JUSTICE SCALIA'S REASONING IN *ITCA*

The Government dismisses *ITCA*'s treatment of *Mitchell* as mere “dicta” from a “purely statutory preemption case.” (ECF No. 56 at 5). This characterization is shortsighted. *See ITCA*, 570 U.S. at 16. *ITCA* was not “purely” a statutory preemption case in the sense the Government suggests.

In *ITCA* the Supreme Court weighed whether the National Voting Rights Act precluded the state of Arizona from requiring voter registration applicants to submit information beyond that required by the Federal Form itself. Justice Scalia, writing for the majority, considered an argument advanced by Arizona regarding the statutory construction going to the heart of the case—whether the NVRA's language conflicted with Arizona's constitutional authority to establish voter qualifications. In this context the Court observed that “the Elections Clause empowers Congress to regulate *how* federal elections are held, but not *who* may vote in them.” *Id.* at 16 (emphasis in original). The Court emphasized that “[t]he Framers’ aversion to concentrated power” motivated the allocation of voter-qualification authority to states. *Id.* at 17. And the Court was crystal clear: courts “cannot read [the Elections Clause] as treating implicitly what these other constitutional provisions regulate explicitly.” *Id.* at 16.

Moreover, Justice Scalia's assessment of *Mitchell* was not an offhand aside. It was the Court's considered assessment of a directly relevant precedent, which the Court had to address precisely because *Mitchell* might otherwise be thought to support a broader reading of Congress's

Elections Clause power. The Court concluded that it was of “minimal precedential value” because it “lacked a majority rationale.” *Id.* at 16 n.8. And, contrary to the Government’s strained reasoning in its papers, the reason that *Mitchell* was of “minimal precedential value” in *ITCA* also applies to this case.

Finally, the Government’s suggestion that Justice Scalia’s recounting of *Mitchell* was “inexplicably incomplete” because it omitted the residency-requirement holding, (ECF No. 56 at 6), is a red herring. The residency-requirement holding is irrelevant to the question of whether the Elections Clause grants Congress authority over voter qualifications. Every justice in the *Mitchell* majority on residency requirements relied on the Fourteenth Amendment’s enforcement power, not the Elections Clause. *See Mitchell*, 400 U.S. at 285–87 (Stewart, J.); *id.* at 237–38 (Brennan, White, Marshall, JJ.). Justice Scalia had no reason to discuss a holding that sheds no light on the Elections Clause question before the Court in *ITCA*, just as this Court similarly has no such reason.

Ultimately, unlike *Mitchell*, *ITCA* is a majority opinion with binding authority. As the Eleventh Circuit observed in *Myrick*, when faced with “any conflict or inconsistency of holdings, we would be bound to follow the more recent of the two decisions.” *See Myrick*, 13 F.3d at 1523 (considering conflicting holdings and electing to follow the holding that was “from a majority of the Court, not a mere plurality; it is the more recent exposition; and it is binding on this Court”). This Court should therefore follow the rule set forth in *ITCA*.

III. *WATSON* v. RNC DOES NOT SUPPORT FEDERAL CONGRESSIONAL AUTHORITY TO SET VOTER QUALIFICATIONS

The Government’s reliance on *Watson* v. RNC, 146 S. Ct. 2165 (2026) fares no better. Indeed, *Watson* never even broached the Constitutional question at the heart of this case. The Government argues that *Watson*, is the “latest” relevant precedent and that it relied on UOCAVA without questioning Congress’s power. (ECF No. 56 at 7). But as the Government itself concedes,

Watson is “a statutory preemption case, not a constitutional one.” (*Id.* at 7). *Watson* did not address, much less decide, whether Congress has the constitutional authority to set voter qualifications. The Court’s reliance on UOCAVA as a matter of statutory interpretation says nothing about the constitutional validity of congressional efforts to prescribe voter qualifications. *Cf. Nat’l Pork Producers Council v. Ross*, 598 U.S. 356, 373–74 (2023) (“[O]ur opinions dispose of discrete cases and controversies and they must be read with a careful eye to context.”).

Moreover, the Government’s argument that UOCAVA is a “who” regulation and that the Court’s reliance on it in *Watson* implicitly blesses congressional power over voter qualifications is facially overbroad. UOCAVA’s constitutionality was not litigated in *Watson*; the fact that the Court relied on UOCAVA in a statutory case does not amount to a *sub silentio* constitutional holding.

IV. SECTION 611 IS NOT INDEPENDENTLY SUSTAINABLE UNDER CONGRESS’S IMMIGRATION POWER

The Government falls back on its argument that § 611 is independently sustained by Congress’s “broad authority over immigration and foreign affairs” (ECF No. 56 at 9), but that argument was thoroughly addressed by both *Amicus* and Defendant in prior briefing. *See* (ECF No. 52 at 31–41); (ECF No. 32 at 3–10). The Government’s response adds little substance to a weak argument, and Defendant rests on his prior arguments made in his papers and at oral argument.

CONCLUSION

In short, the analysis in Mr. Clement’s *Amicus* is correct. *Mitchell* does not establish that Congress possesses plenary authority over voter qualifications in federal elections, and neither *Watson* nor the Government’s powers over immigration saves § 611 from being unconstitutional.

For the foregoing reasons, Mr. Renaud respectfully requests that this Court reject the Government's arguments and grant his Motion to Dismiss Count V of the Indictment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on August 12, 2026 via transmission of Notices of Electronic Filing generated by CM/ECF to all parties registered to receive notice in this case.

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