

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION

NANCY CAROLA JACOBSON, *et al.*,

Plaintiffs,

v.

KENNETH DETZNER, in his official  
capacity as the Secretary of State, *et al.*,

Defendant and Defendant-Intervenors.

Case No. 4:18-cv-00262-MW-CAS

**FLORIDA SECRETARY OF STATE'S ANSWER  
AND AFFIRMATIVE DEFENSES**

Defendant, KENNETH DETZNER, in his official capacity as the Florida Secretary of State, by and through his undersigned counsel, hereby answers Plaintiff's Complaint for Declaratory and Injunctive Relief.

**RESPONSE TO ALLEGATIONS**

As to the numbered paragraphs of the Complaint, the Secretary answers as follows:

**NATURE OF THE CASE**

1. The cases cited speak for themselves. The Secretary denies any remaining factual allegations or legal conclusions contained in numbered paragraph 1.

2. The statute cited speaks for itself. The Secretary denies any remaining factual allegations or legal conclusions contained in numbered paragraph 2.

3. The Secretary is without sufficient information and knowledge to admit or deny the factual allegations contained in numbered paragraph 3; therefore denied.

4. Denied.

5. Denied.

6. The cases cited speak for themselves. The Secretary denies any remaining factual allegations or legal conclusions contained in numbered paragraph 6.

### **JURISDICTION & VENUE**

7. The Secretary admits that this action was brought under 42 U.S.C. §§ 1983 and 1988. The Secretary denies any remaining factual allegations or legal conclusions contained in numbered paragraph 7.

8. Admitted.

9. Admitted.

10. In light of the Order Transferring Venue issued on May 28, 2018, the Secretary admits that venue is proper in the Tallahassee Division of the U.S. District Court in the Northern District of Florida.

11. The statutes cited speak for themselves.

12. The Secretary is without sufficient information and knowledge to admit or deny the factual allegations contained in numbered paragraph 3; therefore denied.

### **PARTIES**

13. The Secretary specifically denies the allegations of numbered paragraph 13 concerning the potential impact of “the Ballot Order Statute.” The Secretary is without sufficient information and knowledge to admit or deny the factual allegations contained in numbered paragraph 13; therefore denied.

14. The Secretary specifically denies the allegations of numbered paragraph 14 concerning the potential impact of “the Ballot Order Statute.” The Secretary is without sufficient information and knowledge to admit or deny the factual allegations contained in numbered paragraph 14; therefore denied.

15. The Secretary specifically denies the allegations of numbered paragraph 15 concerning the potential impact of “the Ballot Order Statute.” The Secretary is without sufficient information and knowledge to admit or deny the factual allegations contained in numbered paragraph 15; therefore denied.

16. The Secretary specifically denies the allegations of numbered paragraph 16 concerning the potential impact of “the Ballot Order Statute.” The Secretary is without sufficient information and knowledge to admit or deny the factual allegations contained in numbered paragraph 16; therefore denied.

17. The Secretary specifically denies the allegations of numbered paragraph 17 concerning the potential impact of “the Ballot Order Statute.” The Secretary is without sufficient information and knowledge to admit or deny the factual allegations contained in numbered paragraph 17; therefore denied.

18. The Secretary specifically denies the allegations of numbered paragraph 18 concerning the potential impact of “the Ballot Order Statute.” The Secretary is without sufficient information and knowledge to admit or deny the factual allegations contained in numbered paragraph 18; therefore denied.

19. The Secretary specifically denies the allegations of numbered paragraph 19 concerning the potential impact of “the Ballot Order Statute.” The Secretary is without sufficient information and knowledge to admit or deny the factual allegations contained in numbered paragraph 19; therefore denied.

20. The Secretary specifically denies the allegations of numbered paragraph 20 concerning the potential impact of “the Ballot Order Statute.” The Secretary is without sufficient information and knowledge to admit or deny the factual allegations contained in numbered paragraph 20; therefore denied.

21. The Secretary specifically denies the allegations of numbered paragraph 21 concerning the potential impact of “the Ballot Order Statute.” The Secretary is without sufficient information and knowledge to admit or deny the factual allegations contained in numbered paragraph 21; therefore denied.

22. Admitted.

### **STATEMENT OF THE FACTS AND LAW**

23. The cases and publications cited speak for themselves. The Secretary is without sufficient information and knowledge to admit or deny any remaining factual allegations contained in numbered paragraph 23; therefore denied.

24. The publications cited speak for themselves. The Secretary is without sufficient information and knowledge to admit or deny any remaining factual allegations contained in numbered paragraph 24; therefore denied.

25. The Secretary is without sufficient information and knowledge to admit or deny the factual allegations contained in numbered paragraph 25; therefore denied.

26. The Secretary is without sufficient information and knowledge to admit or deny the factual allegations contained in numbered paragraph 26; therefore denied.

27. The Secretary is without sufficient information and knowledge to admit or deny the factual allegations contained in numbered paragraph 27; therefore denied.

28. The publication cited speaks for itself. The Secretary is without sufficient information and knowledge to admit or deny any remaining factual allegations contained in numbered paragraph 28; therefore denied.

29. The publication cited speaks for itself. The Secretary is without sufficient information and knowledge to admit or deny any remaining factual allegations contained in numbered paragraph 29; therefore denied.

30. Admitted.

31. The statute cited speaks for itself.

32. Admitted that “the candidates of the party that won the last Florida Governor’s election are listed first on the ballot in every partisan election that follows (until such time as another party’s candidate wins the Governor’s election).” Otherwise, denied.

33. Denied. (Allegations in footnote No. 3 admitted).

34. Admitted that, in the 2010 and 2014 gubernatorial elections, the Republican Party candidate defeated the Democratic Party candidate by approximately 1.2% and 1% of the vote, respectively. The Secretary denies all remaining factual allegations or characterizations in numbered paragraph 34.

35. Denied.

36. Denied.

37. Denied.

38. Denied.

39. Admitted that, in 2000, the Republican Party candidate for U.S. House of Representatives in Congressional District 8 defeated the Democratic Party

candidate by approximately 1.6% of the vote. The Secretary denies any remaining factual allegations or characterizations in numbered paragraph 39.

40. Admitted that, in 2006, the Republican Party candidate for U.S. House of Representatives in Congressional District 13 defeated the Democratic Party candidate by approximately 0.2% of the vote. The Secretary denies any remaining factual allegations or characterizations in numbered paragraph 40.

41. Admitted that, in 2006, the Republican Party candidate for Florida House of Representatives District 44 defeated the Democratic Party candidate by approximately 1.8% of the vote. The Secretary denies any remaining factual allegations or characterizations in numbered paragraph 41.

42. Admitted that, in 2016, the Republican Party candidate in the Florida House of Representatives District 36 election defeated the Democratic Party candidate by approximately 1.02% of the vote, which was equivalent to 691 votes. The Secretary denies any remaining factual allegations or characterizations in numbered paragraph 42.

43. Admitted that, in 2016, the Republican Party candidate for Florida House of Representatives District 63 defeated the Democratic Party candidate by approximately 1.8% of the vote. The Secretary denies any remaining factual allegations or characterizations in numbered paragraph 43.

44. The cases cited speak for themselves. The Secretary denies any remaining factual allegations or legal conclusions contained in numbered paragraph 44.

45. The Secretary admits that there are multiple alternative ways to order major political party candidates on a ballot; provided, however, that the ballot order complies with applicable state law. The Secretary denies any remaining factual allegations or legal conclusions contained in numbered paragraph 45.

46. The statutes and constitutional provision cited speak for themselves. The Secretary denies any remaining factual allegations or legal conclusions contained in numbered paragraph 46.

47. The cases cited speak for themselves. The Secretary denies any remaining factual allegations or legal conclusions contained in numbered paragraph 47.

48. The statutes and case cited speak for themselves. The Secretary denies any remaining factual allegations or legal conclusions contained in numbered paragraph 48.

49. Denied.



## **CLAIMS FOR RELIEF**

### **COUNT I**

50. The Secretary incorporates by reference the responses to numbered paragraphs 1-49 of the Complaint.

51. The legal authorities cited speak for themselves. The Secretary denies any remaining factual allegations or legal conclusions contained in numbered paragraph 51.

52. The cases cited speak for themselves. The Secretary denies any remaining factual allegations or legal conclusions contained in numbered paragraph 52.

53. The cases cited speak for themselves. The Secretary denies any remaining factual allegations or legal conclusions contained in numbered paragraph 53.

54. Denied

55. Denied.

The Secretary further denies that Plaintiffs are entitled to any relief pursuant to Count I of the Complaint.

### **COUNT II**

56. The Secretary incorporates by reference the responses to numbered paragraphs 1-49 of the Complaint.

57. The constitutional provision and cases cited speak for themselves. The Secretary denies any remaining factual allegations or legal conclusions contained in numbered paragraph 57.

58. The cases cited speak for themselves. The Secretary denies any remaining factual allegations or legal conclusions contained in numbered paragraph 58.

59. The cases cited speak for themselves. The Secretary denies any remaining factual allegations or legal conclusions contained in numbered paragraph 59.

60. Denied.

The Secretary further denies that Plaintiffs are entitled to any relief pursuant to Count II of the Complaint.

### **AFFIRMATIVE DEFENSES**

The Secretary hereby alleges the following affirmative defenses:

1. Failure to State a Cause of Action. The Complaint and each claim alleged therein fails to state a valid cause of action or claim for relief.
2. Constitutional Estoppel. The doctrine of constitutional estoppel bars the Plaintiffs from challenging the constitutionality of the statute from which they have previously benefitted.
3. Lack of Standing. The Plaintiffs lack standing under Article III of the

U.S. Constitution.

4. Eleventh Amendment. The Secretary asserts the defense of Eleventh Amendment immunity to all claims to which that defense applies.

5. Laches. The Secretary asserts the defense of laches to all claims to which that defense applies.

Respectfully submitted by:

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August 7, 2018

*Counsel for the Secretary of State*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via transmission of a Notice of Electronic Filing through the Court's CM/ECF system to the following on this 7th day of August, 2018:

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