

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

NANCY CAROLA JACOBSON,
TERENCE FLEMING, SUSAN
BOTTCHER, PRIORITIES USA, DNC
SERVICES CORPORATION /
DEMOCRATIC NATIONAL
COMMITTEE, DSCC a/k/a
DEMOCRATIC SENATORIAL
CAMPAIGN COMMITTEE, DCCC a/k/a
DEMOCRATIC CONGRESSIONAL
CAMPAIGN COMMITTEE,
DEMOCRATIC GOVERNORS
ASSOCIATION, and DEMOCRATIC
LEGISLATIVE CAMPAIGN
COMMITTEE,

Plaintiffs,

v.

KENNETH DETZNER, in his official
capacity as the Florida Secretary of State,

Defendant,

and

NATIONAL REPUBLICAN SENATE
COMMITTEE, and REPUBLICAN
GOVERNORS ASSOCIATION,

Defendant-Intervenors.

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

ANSWER AND AFFIRMATIVE DEFENSES
OF DEFENDANT-INTERVENORS

COME NOW Defendant-Intervenors the National Republican Senatorial Committee and the Republican Governors Association (the “Defendant-Intervenors”), by and through their undersigned counsel, hereby answers the Complaint of Plaintiffs (the “Complaint”) as follows:

RESPONSE TO ALLEGATIONS

As to the numbered paragraphs of the Complaint, Defendant-Intervenors answers as follows:

Nature of the Case

1. Defendant-Intervenors note that this paragraph is Plaintiffs’ characterization of their claims that requires no response. To the extent a response is required, Defendant-Intervenors deny that the statute violates any provision of law and otherwise further deny the allegations contained in paragraph 1.

2. Defendant-Intervenors note that this paragraph contains Plaintiffs’ characterization of the statute at issue, Fla. Stat. § 101.151(3)(a) (2017), and Defendant-Intervenors respectfully refer the Court to the statute itself for a full and accurate statement of what the statute says. To the extent a response is required, Defendant-Intervenors otherwise deny the allegations contained in paragraph 2.

3. Defendant-Intervenors deny the allegations contained in paragraph 3 since they are without knowledge or information sufficient to form a belief as to

the truth of the allegations contained therein. In so far as a response may be required, Defendant-Intervenors deny.

4. Denied.

5. Denied.

6. Defendant-Intervenors state that paragraph 6 contains no factual allegations to which any response is required. In so far as a response may be required, Defendant-Intervenors deny.

Jurisdiction and Venue

7. Defendant-Intervenors admit that this action was brought under 42 U.S.C. §§ 1983 and 1988. Defendant-Intervenors deny any remaining factual allegations or legal conclusions contained in paragraph 7.

8. Admit.

9. Admit.

10. Defendant-Intervenors note the Order Transferring Venue issued on May 28, 2018 and therefore admit that venue is now proper in the Tallahassee Division of the U.S. District Court of the Northern District of Florida.

11. Plaintiffs purport to characterize the declaratory judgment statute. Defendant-Intervenors respectfully refer the Court to the statute itself for a full and accurate statement of what the statute authorizes.

12. Defendant-Intervenors state that Paragraph 12 contains no factual allegations to which any response is required. In so far as any response is required to paragraph 12, it is denied.

Parties

13. Defendant-Intervenors deny any alleged impact of the “Ballot Order Statute” found in paragraph 13. Defendant-Intervenors are without knowledge or information sufficient to form a belief to admit or deny the remaining factual and legal allegations contained in paragraph 13.

14. Defendant-Intervenors deny any alleged impact of the “Ballot Order Statute” found in paragraph 14. Defendant-Intervenors are without knowledge or information sufficient to form a belief to admit or deny the remaining factual and legal allegations contained in paragraph 14. In so far as any response is required to paragraph 14, it is denied.

15. Defendant-Intervenors deny any alleged impact of the “Ballot Order Statute” found in paragraph 15. Defendant-Intervenors are without knowledge or information sufficient to form a belief to admit or deny the remaining factual and legal allegations contained in paragraph 15. In so far as any response is required to paragraph 15, it is denied.

16. Defendant-Intervenors deny any alleged impact of the “Ballot Order Statute” found in paragraph 16. Defendant-Intervenors are without knowledge or

information sufficient to form a belief to admit or deny the remaining factual and legal allegations contained in paragraph 16. In so far as any response is required to paragraph 16, it is denied.

17. Defendant-Intervenors deny any alleged impact of the “Ballot Order Statute” found in paragraph 17. Defendant-Intervenors are without knowledge or information sufficient to form a belief to admit or deny the remaining factual and legal allegations contained in paragraph 17. In so far as any response is required to paragraph 17, it is denied.

18. Defendant-Intervenors deny any alleged impact of the “Ballot Order Statute” found in paragraph 18. Defendant-Intervenors are without knowledge or information sufficient to form a belief to admit or deny the remaining factual and legal allegations contained in paragraph 18. In so far as any response is required to paragraph 18, it is denied.

19. Defendant-Intervenors deny any alleged impact of the “Ballot Order Statute” found in paragraph 19. Defendant-Intervenors are without knowledge or information sufficient to form a belief to admit or deny the remaining factual and legal allegations contained in paragraph 19. In so far as any response is required to paragraph 19, it is denied.

20. Defendant-Intervenors deny any alleged impact of the “Ballot Order Statute” found in paragraph 20. Defendant-Intervenors are without knowledge or

information sufficient to form a belief to admit or deny the remaining factual and legal allegations contained in paragraph 20. In so far as any response is required to paragraph 20, it is denied.

21. Defendant-Intervenors deny any alleged impact of the “Ballot Order Statute” found in paragraph 21. Defendant-Intervenors are without knowledge or information sufficient to form a belief to admit or deny the remaining factual and legal allegations contained in paragraph 21. In so far as any response is required to paragraph 21, it is denied.

22. Defendant-Intervenors admit the allegations contained in paragraph 22 except that Defendant-Intervenors are without knowledge or information sufficient to form a belief to admit or deny the “Secretary, personally and through the conduct of his employees, officers, agents, and servants, acted under color of state law at all times relevant to this action,” therefore that statement is denied.

Factual Allegations

“Position Bias”

23. Defendant-Intervenors respectfully refer the Court to the cited authorities themselves for a full and accurate statement of what they say. Defendant-Intervenors are without knowledge or information sufficient to form a belief to admit or deny the factual and legal allegations contained in paragraph 23. In so far as any response is required to paragraph 23, it is denied.

24. Defendant-Intervenors respectfully refer the Court to the cited authorities themselves for a full and accurate statement of what they say. Defendant-Intervenors are without knowledge or information sufficient to form a belief to admit or deny the factual and legal allegations contained in paragraph 24. In so far as any response is required to paragraph 24, it is denied.

25. Defendant-Intervenors are without knowledge or information sufficient to form a belief to admit or deny the factual and legal allegations contained in paragraph 25. In so far as any response is required to paragraph 25, it is denied.

Alleged Effects of Position Bias

26. Defendant-Intervenors are without knowledge or information sufficient to form a belief to admit or deny the factual and legal allegations contained in paragraph 26. In so far as any response is required to paragraph 26, it is denied.

27. Defendant-Intervenors are without knowledge or information sufficient to form a belief to admit or deny the factual and legal allegations contained in paragraph 27. In so far as any response is required to paragraph 27, it is denied.

28. Defendant-Intervenors respectfully refer the Court to the authority cited itself for a full and accurate statement of what they say. Defendant-

Intervenors are without knowledge or information sufficient to form a belief to admit or deny the factual and legal allegations contained in paragraph 28. In so far as any response is required to paragraph 28, it is denied.

29. Defendant-Intervenors respectfully refer the Court to the cited authorities themselves for a full and accurate statement of what they say. Defendant-Intervenors are without knowledge or information sufficient to form a belief to admit or deny the factual and legal allegations contained in paragraph 29. In so far as any response is required to paragraph 29, it is denied

The Ballot Order Statute

30. Plaintiffs purport to characterize the statute at issue, Fla. Stat. § 101.151(3)(a) (2017), and Defendant-Intervenors respectfully refer the Court to the statute itself for a full and accurate statement of what the statute says. To the extent a response is required, Defendant-Intervenors admit the allegations in paragraph 30.

31. Defendant-Intervenors admit that 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), while the candidates whose party did not win the last Governor’s election are never listed first on the ballot.” Defendant-Intervenors deny the remaining portion of the paragraph.

Alleged Effects of The ballot Order Statute

32. Denied.

33. Denied.

a. Defendant-Intervenors admit the allegations found in footnote 3.

34. Defendant-Intervenors admit that Rick Scott won his gubernatorial elections by 1.2% in 2010 and 1% in 2014 but are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 34. Therefore all other allegations are denied.

35. Denied.

36. Denied.

37. Denied.

38. Denied.

39. Defendant-Intervenors admit that the 2000 Republican candidate for Congressional District 8 won his election by 1.6% of the vote but are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the remainder of paragraph 39. In so far as any response is required to paragraph 39, it is denied.

40. Defendant-Intervenors admit that the 2006 Republican candidate for Congressional District 13 won his election by 0.2% of the vote. Defendant-Intervenors deny any remaining factual allegations in paragraph 40.

41. Defendant-Intervenors admit that the 2006 Republican candidate for Florida House District 44 won his election by 1.8% of the vote. Defendant-Intervenors deny any remaining factual allegations in paragraph 41.

42. Defendant-Intervenors admit that the 2016 Republican candidate for Florida House District 36 won her election by 1.02% of the vote which is a difference in vote total of about 691 votes. Defendant-Intervenors deny any remaining factual allegations in paragraph 42.

43. Defendant-Intervenors admit that the 2016 Republican candidate for Florida House District 63 won his election by 1.8% of the vote. Defendant-Intervenors deny any remaining factual allegations in paragraph 43.

Election Administration Concerns

44. Defendant-Intervenors note that this paragraph contains a legal conclusion followed by Plaintiffs' characterization of certain court cases (*Dunn v. Blumstein*, 405 U.S. 330, 350 (1972); *Graves v. McElderry*, 946 F. Supp. 1569 (W.D. Okla. 1996)), and Defendant-Intervenors respectfully refer the Court to the cases themselves for a full and accurate statement of what the cases say. To the extent a response is required, Defendant-Intervenors otherwise deny the allegations contained in paragraph 44.

45. Defendant-Intervenors admit there are alternative ways to order candidates on a ballot but are without knowledge or information sufficient to form

a belief as to the truth of the allegations contained in the remainder of paragraph 45 and therefore deny the allegations.

46. Defendant-Intervenors note that this paragraph contains Plaintiffs' characterization of an Ohio statute, Ohio Rev. Code Ann. § 3505.03, and Defendant-Intervenors respectfully refer the Court to the statute itself for a full and accurate statement of what the statute says. To the extent a response is required, Defendant-Intervenors otherwise deny the allegations contained in paragraph 46.

47. Defendant-Intervenors note that this paragraph contains a legal conclusion followed by Plaintiffs' characterization of certain court cases (*McLain*, 637 F.2d at 1169; *Gould*, 14 Cal. 3d at 676), and Defendant-Intervenors respectfully refer the Court to the cases themselves for a full and accurate statement of what the cases say. To the extent a response is required, Defendant-Intervenors otherwise deny the allegations contained in paragraph 47.

48. Defendant-Intervenors note that this paragraph contains Plaintiffs' characterization of New Jersey, Illinois, and California statutes (N.J. Stat. § 19:14-12; 10 ILCS 5/7-60; Cal. Elec. Code § 13112) and a court case (*Gould*, 14 Cal. 3d at 676), and Defendant-Intervenors respectfully refer the Court to the statutes and case themselves for a full and accurate statement of what the statutes and case says. To the extent a response is required, Defendant-Intervenors otherwise deny the allegations contained in paragraph 48.

49. Denied.

CLAIMS FOR RELIEF

COUNT 1

Defendant-Intervenors deny that Plaintiffs are entitled to any relief under Count 1 of the Complaint.

50. Defendant-Intervenors repeat and reallege paragraphs 1 through 49 of this Answer above as fully set forth herein.

51. Defendant-Intervenors respectfully refer the Court to the cited authorities themselves for a full and accurate statement of what they say. Defendant-Intervenors state that paragraph 51 contains no factual allegations to which any response is required. In so far as any response is required to paragraph 51, it is denied.

52. Defendant-Intervenors respectfully refer the Court to the cited authorities themselves for a full and accurate statement of what they say. Defendant-Intervenors are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 52. In so far as any response is required to paragraph 52, it is denied.

53. Defendant-Intervenors respectfully refer the Court to the cited authorities themselves for a full and accurate statement of what they say. Defendant-Intervenors are without knowledge or information sufficient to form a

belief as to the truth of the allegations contained in paragraph 53. In so far as any response is required to paragraph 53, it is denied.

54. Denied.

55. Denied.

COUNT II

Defendant-Intervenors deny that Plaintiffs are entitled to any relief under Count 2 of the Complaint.

56. Defendant-Intervenors repeat and reallege paragraphs 1 through 49 of this Answer above as if fully set forth herein.

57. Defendant-Intervenors respectfully refer the Court to the cited authorities themselves for a full and accurate statement of what they say. Defendant-Intervenors state that paragraph 57 contains no factual allegations to which any response is required. In so far as any response is required to paragraph 57, it is denied.

58. Defendant-Intervenors respectfully refer the Court to the cited authorities themselves for a full and accurate statement of what they say. Defendant-Intervenors state that paragraph 58 contains no factual allegations to which any response is required. In so far as any response is required to paragraph 58, it is denied.

59. Defendant-Intervenors respectfully refer the Court to the cited authorities themselves for a full and accurate statement of what they say.

Defendant-Intervenors state that paragraph 59 contains no factual allegations to which any response is required. In so far as any response is required to paragraph 59, it is denied.

60. Denied.

AFFIRMATIVE DEFENSES

Defendant-Intervenors hereby allege the following affirmative defenses:

1) **Failure to State a Claim**. The Complaint fails to state a claim upon which relief can be granted nor does it claim a valid cause of action.

2) **Lack of Standing**. The Plaintiffs lack standing under Article III of the United States Constitution.

3) **Laches**. Defendant-Intervenors assert the defense of laches to all claims brought in the Complaint.

4) Florida's ballot position statute is lawful and is enforced in accordance with all requirements of the United States Constitution.

5) Defendant-Intervenors reserve the right to designate additional defenses as they may come to light during the course of investigation, discovery, or otherwise.

WHEREFORE, for the foregoing reasons, Defendant-Intervenors respectfully request that this Honorable Court dismiss Plaintiffs' Complaint with

prejudice and award Defendant-Intervenors reasonable attorneys' fees and costs, as well as such other and further relief that the Court deems just and equitable.

Respectfully Submitted,
DATED: August 7, 2018

Holtzman Vogel Josefiak Torchinsky PLLC

/s/ Jason Torchinsky

Jason Torchinsky (VA 47481)

Shawn Sheehy (admitted pro hac vice)

Phillip M. Gordon (admitted pro hac vice)

45 North Hill Drive, Suite 100

Warrenton, VA 20106

P: (540) 341-8808

F: (540) 341-8809

E: JTorchinsky@hvjt.law

SSheehy@hvjt.law

PGordon@hvjt.law

Counsel to Defendant-Intervenors

CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2018 the foregoing was filed with the Clerk via the CM/ECF system that sent a Notice of Electronic Filing to all counsel of record.

/s/ Jason Torchinsky

Jason Torchinsky

VA Bar No. 47481

45 North Hill Drive, Suite 100

Warrenton, VA 20106

P: (540) 341-8808

F: (540) 341-8809

E: JTorchinsky@hvjt.law

Counsel to Defendant-Intervenors