

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT IN AND  
FOR LEON COUNTY, FLORIDA

ROBERT ROCHFORD,  
*Plaintiff,*

v.

CASE No. 2024 CA 001976

KATHY CASTOR, in her capacity  
as the Democratic candidate for  
U.S. Congressional District 14, *et al.*,  
*Defendants.*

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

Defendant, Florida Secretary of State Cord Byrd, pursuant to section 102.168, Florida Statutes, and Rule 1.140, Florida Rules of Civil Procedure, answers and then provides other defenses to this election contest which challenges the November 5, 2024, general election for Congressional District 14 (CD 14). Compl. ¶¶ 1-2.

**ANSWER**

1. Admitted the statute speaks for itself; otherwise denied.
2. Admitted Plaintiff lost the election for CD 14 and that the statute speaks for itself; otherwise denied.
3. Admitted.
4. Admitted Plaintiff lost the election for CD 14 and contests the results but otherwise denied.
5. Denied.
6. Admitted that venue is proper; otherwise, denied.

7. Without knowledge as to Plaintiff's residency; otherwise, admitted.
8. Admitted.
9. Admitted.
10. Admitted.
11. Admitted the Elections Canvassing Commission is responsible for certifying election results for CD 14; otherwise denied.
12. Admitted.
13. Denied that Supervisor Lattimer is responsible for overseeing the election process in Pasco County; otherwise admitted.
14. Admitted.
15. Admitted that a voter must be registered in the county in which they reside and must be registered to vote; otherwise without knowledge and therefore denied.
16. Admitted that registered voters may request a vote-by-mail ballot in person, by mail, or online; otherwise, without knowledge and therefore denied.
17. Without knowledge and therefore denied.
18. Without knowledge and therefore denied.
19. Without knowledge and therefore denied.
20. Without knowledge and therefore denied.
21. Without knowledge and therefore denied.
22. Without knowledge and therefore denied.

23. Without knowledge and therefore denied.
24. Admitted that the bill, statute, and case speak for themselves; otherwise, without knowledge and therefore denied.
25. Admitted that section 101.62(2) speaks for itself; otherwise, denied.
26. Admitted that section 101.62(2) speaks for itself; otherwise, without knowledge and therefore denied.
27. Admitted that section 101.62(2) speaks for itself; otherwise, without knowledge and therefore denied.
28. Admitted that section 101.62(2) speaks for itself; otherwise, denied.
29. Denied.
30. Without knowledge and therefore denied.
31. Without knowledge and therefore denied.
32. Admitted.
33. The statutes speak for themselves; otherwise, without knowledge and therefore denied.
34. Denied.
35. Without knowledge and therefore denied.
36. Without knowledge and therefore denied.
37. Without knowledge and therefore denied.
38. Without knowledge and therefore denied.
39. Without knowledge and therefore denied.

40. Without knowledge and therefore denied.
41. Without knowledge and therefore denied.
42. Without knowledge and therefore denied.
43. Without knowledge and therefore denied.

## DEFENSES

Plaintiff, Robert Rochford, brings this election contest, which is governed by section 102.168, Florida Statutes. The “statutory right to bring an election contest after an election has taken place, which section 102.168 confers, should be construed in strict conformity with the language of the statute.” *Norman v. Ambler*, 46 So. 3d 178, 181 (Fla. 1st DCA 2010). This is because “[a]t common law, except for limited application of quo warranto, there was no right to contest in court any public election, [as] such a contest is political in nature and therefore outside the judicial power.” *Id.* quoting *McPherson v. Flynn*, 397 So. 2d 665, 667 (Fla. 1981). “Courts must [therefore] take care in post-election challenges to avoid disenfranchising voters without *clear statutory warrant.*” *Id.* (emphasis added).

### 1. The Court Lacks Jurisdiction

This Court (and any other court) lacks jurisdiction to hear any contest to congressional elections. The validity of those elections is a question exclusively for the respective house of the legislative branch, which is in this case, the U.S. House of Representatives. *See* U.S. Const. art. I, § 5, cl. 1 (congressional elections).

Article I, Section 5, of the United States Constitution plainly provides that “[e]ach House shall be the judge of the elections, returns and qualifications of its own members.” It is well-settled that this provision deprives Florida courts of jurisdiction to determine congressional election contests. *E.g., State v. Crawford*, 10 So. 118, 121 (Fla. 1891) (“The constitution of the United States has not elsewhere given to this court the power to pass upon the question of the legality of the election of a United States senator, but by [article I, section 5, clause 1] it has expressly excluded from it the right to do so.”); *Opinion of the Justices*, 12 Fla. 686, 688–89 (1868) (“[I]t is out of our power to *decide* that the election was ‘illegal and void,’ that question being exclusively for the Senate of the United States.”). Congress has even enacted procedures for an election contest before the United States House or Senate. *See* 2 U.S.C. § 381-396 (Federal Contested Elections Act). The Complaint should therefore be dismissed for lack of jurisdiction.

## **2. Failure to state a cause of action**

Even if the Court could hear a congressional contest, Plaintiff has failed to state a cause of action. One of the grounds to contest an election is “[m]isconduct, fraud, or corruption on the part of any election official...sufficient to change or place in doubt the result of the election.” § 102.168(3)(a), Fla. Stat. While an action may not be dismissed for “any want of form” in the statement of grounds, it can be dismissed if the grounds are not “sufficient to clearly inform the defendant” of the “particular proceeding or cause.” § 102.168(5), Fla. Stat. Here, Plaintiff’s alleged suspicions about the *possibility* of fraud or misconduct are insufficient and may be dismissed.

Plaintiff states that his contest is based on fraud or misconduct. Compl. ¶ 1. Throughout his Complaint however, Plaintiff alleges only that vote-by-mail requests, and ballots by extension, *could* be fraudulent, but does not allege that any vote-by-mail ballots or requests *are* fraudulent. Specifically, Plaintiff alleges that supervisors have a “Voter Fraud Protection System which is designed to catch all such applications [for vote-by-mail ballots] where more than 5 applications use the same address” but that such system was “turned off or somehow overridden.” Compl. ¶¶ 17-18, 20. But Plaintiff does not allege that any vote-by-mail requests using the same address are fraudulent, just that the turned-off system “would have caught” 5 or more requests using the same address. Compl. ¶¶ 20, 22. Plaintiff also specifically alleges that a certain number of requesters failed to provide, and the supervisors failed to obtain, the required identification information—“Florida driver license number, Florida identification card number, or last four digits of the social security number.” Compl. ¶¶ 27-33. But Plaintiff does not allege that any of those requests were fraudulent.

Plaintiff alleges only a possibility of fraud or misconduct and does not allege that any fraud or misconduct occurred. Indeed, Plaintiff alleges a number of “*suspect* ballots” and “*questionable* ballots.” Compl. ¶ 23 (emphasis added). Plaintiff alleges “misconduct and fraud” were “*invited*.” Compl. ¶ 29 (emphasis added). Plaintiff alleges the vote-by-mail process “is *compromised*” and this “*allows, invites, and encourages* fraud, misconduct, and corruption.” Compl. ¶¶ 35-36 (emphasis added); *see also id.* at ¶ 38 (“considered null and compromised”); ¶ 39 (“allowed fraud and misconduct”); ¶ 41 (“creates an

environment which invites rampant fraudulent behavior”). But nowhere does Plaintiff allege any fraud or misconduct *occurred*. Nor does Plaintiff allege he requested records or any other information from Supervisors to confirm his suspicions. *C.f. Barber v. Moody*, 229 So.2d 284 (Fla. 1st DCA 1969), *certiorari denied* 237 So.2d 753 (reversing dismissal where officials “had possession of the absentee ballots and documents alleged to be illegal, had denied appellant the opportunity to see same before the complaint was filed”). To be sure, Plaintiff ultimately requests that the *Court* “order an independent investigation” into his suspicions. Compl. at 10 (wherefore clause). Plaintiff therefore fails to state sufficient grounds for contesting an election and the Complaint should be dismissed. *See e.g., Kinney v. Putnam Cnty Canvassing Bd. by and through Harris*, 253 So.3d 1254 (Fla. 5th DCA 2018).

### **3. Laches**

This action is barred by laches. To establish the defense of laches, a defendant must prove “(1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense.” *McCray v. State*, 699 So. 2d 1366, 1368 (Fla. 1997) (quoting *Costello v. United States*, 365 U.S. 265, 282, (1961)).

The timeline here is as follows:

November 5, 2024—2024 General Election

November 19, 2024—Elections Canvassing Commission certified “each federal, state, and multicounty office.” § 102.111(2), Fla. Stat. (“on the 14th day after a general election”)

November 27, 2024—Plaintiff filed his Complaint

December 10, 2024—Plaintiff served his Complaint on the Secretary

December 20, 2024—the Secretary’s answer and defenses are due. § 102.168(6), Fla. Stat.

January 3, 2025—Defendant Representative Kathy Castor officially begins her term as Congresswoman for CD 14. 2 U.S.C. § 7 (Congress commences “on the 3d day of January”).

Plaintiff’s suspicions are based on information he has had since at least September. Compl. ¶¶ 18, 21 (specifically citing data from “September 9, 2024”). Indeed, since April, when he became an opposed candidate in the CD 14 race, Plaintiff had access to daily reports of vote-by-mail activity he refers to in his Complaint.<sup>1</sup> § 101.62(2), Fla. Stat. Plaintiff, however, does not allege he made any attempt to investigate his suspicions of fraud or misconduct. *See* Compl. Plaintiff waited until the last day to file an election contest to ask the Court to order an investigation instead. Compl. (wherefore clause); *see McDonald v. Miller*, 90 So.2d 124 (Fla. 1956) (affirming dismissal where plaintiff “was fully aware of the alleged ‘goings on’” and failed to prevent it).

Once filed, Plaintiff made no effort to file a Notice of Priority Status or otherwise request a case management hearing to set an expeditious schedule for resolution. *See* Rule 2.215(h), Fla. R. Gen. Prac. & Jud. Admin. At this point, there does not seem to be sufficient time for resolution before the 118<sup>th</sup> Congress begins on

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<sup>1</sup> It is unknown if Plaintiff is *correctly* interpreting the data he had access to.



January 3, 2025. Moreover, representatives have already been sorted and assigned to committees and presumably begun their work to some extent. Representative Castor's committee assignment is to Energy and Commerce and the Select Committee on the Strategic Competition US and China.<sup>2</sup>

Plaintiff's lack of diligence has resulted in prejudice to the Defendants in terms of the cost and confusion attendant to a potential special election and prejudice to the residents of CD 14 who would be deprived of representation in the interim. The Court should therefore dismiss this action for laches, in addition to lack of jurisdiction and failure to state a cause of action.

Dated: December 20, 2024 Respectfully submitted,

/s/ Ashley E. Davis

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<sup>2</sup> [www.house.gov/representatives#state-florida](http://www.house.gov/representatives#state-florida).

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served to all counsel of record through the Florida Court's E-filing portal.

/s/ Ashley E. Davis  
Attorney

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