

UNITED STATES DISTRICT COURT  
THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-22572-CIV-KING/O'SULLIVAN

EMMA YAIZA DIAZ, et al.

Plaintiffs,

v.

KURT S. BROWNING, Secretary of State of  
Florida, et al.

Defendants.

**DEFENDANT WILLIAM COWLES, ORANGE COUNTY SUPERVISOR OF  
ELECTIONS, ANSWER AND AFFIRMATIVE DEFENSES**

COMES NOW the Defendant, WILLIAM COWLES, ORANGE COUNTY SUPERVISOR OF ELECTIONS ("Defendant Cowles"), by and through its undersigned attorney pursuant to this Court's February 27, 2007, Order and files this Answer and Affirmative Defense, and states as follows:

**ANSWER**

1. Defendant denies the allegations in this paragraph of the Third Amended Complaint.
2. Defendant Cowles does not respond to the allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.
3. Defendant Cowles does not respond to the allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.
4. Defendant Cowles denies the allegation in this paragraph of the Third Amended Complaint.
5. Defendant Cowles is without sufficient knowledge of the allegations in this paragraph as to Duval County, and denies the remaining allegations in this paragraph.

6. Defendant Cowles denies the allegations in this paragraph of the Third Amended Complaint.
7. Defendant Cowles is without sufficient knowledge as to the allegations in this paragraph, and therefore, denies this paragraph.
8. Denied.
9. Defendant Cowles denies that it can provide any opportunities to correct applications after the close of books except or unless permitted by law.
10. Denied.
11. Defendant Cowles denies the allegations in this paragraph relating to corrections after the close of books. Defendant does not respond to the remaining allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.
12. Defendant Cowles does not respond to the allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.
13. Defendant Cowles does not respond to the allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.
14. Defendant Cowles does not respond to the allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.
15. Defendant Cowles does not respond to the allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.
16. Defendant Cowles does not respond to the allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.
17. Defendant Cowles does not respond to the allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.
18. Defendant Cowles does not respond to the allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.
19. Denied.
20. Defendant Cowles does not respond to the allegations in this paragraph that relate to the checking of boxes on voter registration applications pursuant to this Court's February 27, 2007 Order. Defendant Cowles denies the remainder of the allegations in this paragraph of the Third Amended Complaint.
21. Denied.

22. Denied.
23. Denied.
24. Defendant Cowles admits that Plaintiffs attempt to allege a cause of action under 28 USC §§ 1331, 1343(a)(4) and 1367, and that this court would have subject matter jurisdiction over a claim under these statutes.
25. Admitted.
26. Admitted.
27. Defendant Cowles is without sufficient knowledge, and therefore, denies the allegations in this paragraph.
28. Defendant Cowles is without sufficient knowledge, and therefore, denies the allegations in this paragraph.
29. Defendant Cowles is without sufficient knowledge, and therefore, denies the allegations in this paragraph.
30. Defendant Cowles is without sufficient knowledge, and therefore, denies the allegations in this paragraph.
31. Defendant Cowles is without sufficient knowledge, and therefore, denies the allegations in this paragraph.
32. Defendant Cowles is without sufficient knowledge, and therefore, denies the allegations in this paragraph.
33. Defendant Cowles is without sufficient knowledge, and therefore, denies the allegations in this paragraph.
34. Defendant Cowles is without sufficient knowledge, and therefore, denies the allegations in this paragraph.
35. Defendant Cowles is without sufficient knowledge, and therefore, denies the allegations in this paragraph.
36. Defendant Cowles is without sufficient knowledge, and therefore, denies the allegations in this paragraph.
37. Defendant Cowles is without sufficient knowledge, and therefore, denies the allegations in this paragraph.

38. Defendant Cowles is without sufficient knowledge, and therefore, denies the allegations in this paragraph.
39. Defendant Cowles is without sufficient knowledge, and therefore, denies the allegations in this paragraph.
40. Defendant Cowles is without sufficient knowledge, and therefore, denies the allegations in this paragraph.
41. Defendant Cowles is without sufficient knowledge, and therefore, denies the allegations in this paragraph.
42. Defendant Cowles is without sufficient knowledge, and therefore, denies the allegations in this paragraph.
43. Defendant Cowles is without sufficient knowledge, and therefore, denies the allegations in this paragraph.
44. Defendant Cowles admits that Defendant Cowles Cobb was Secretary of State from January 2006 through the date of filing of the Third Amended Complaint. Defendant Cowles admits the content of the state statutes cited in this paragraph, but denies the allegations in this paragraph to the extent that they are inconsistent with the language in the cited statute.
45. Defendant Cowles admits the content of the state and federal statutes cited in this paragraph, but denies the allegations in this paragraph to the extent that they are inconsistent with the language in the cited statutes.
46. Defendant Cowles admits the content of the state statutes cited in this paragraph, but denies the allegations in this paragraph to the extent that they are inconsistent with the language in the cited statute.
47. Defendant Cowles admits the content of the state statutes cited in this paragraph, but denies the allegations in this paragraph to the extent that they are inconsistent with the language in the cited statute.
48. Defendant Cowles admits the content of the state statutes cited in this paragraph, but denies the allegations in this paragraph to the extent that they are inconsistent with the language in the cited statute.
49. Admitted.
50. Defendant Cowles admits that he is Supervisor of Elections in Orange County, Florida, and that the other individuals named in this paragraph are Supervisors of Elections in their respective counties, with the exception of Jerry Holland (Duval County). Defendant Cowles admits he has been sued in this lawsuit, but is without sufficient knowledge as to the Plaintiffs' reasons for suing him.

51. Defendant Cowles admits the content of the state statutes cited in this paragraph, but denies the allegations in this paragraph to the extent that they are inconsistent with the language in the cited statute.
52. Defendant Cowles admits the content of the state statutes cited in this paragraph, but denies the allegations in this paragraph to the extent that they are inconsistent with the language in the cited statute.
53. Defendant Cowles admits the content of the state statutes cited in this paragraph, but denies the allegations in this paragraph to the extent that they are inconsistent with the language in the cited statute.
54. Defendant Cowles admits the content of the First, Fifth and Fourteenth Amendments to the United States Constitution, but denies the allegations in this paragraph to the extent that they are inconsistent with the language in the cited Constitutional provisions.
55. Admitted.
56. Admitted.
57. Defendant Cowles admits the content of the state and federal statutes cited in this paragraph, but denies the allegations in this paragraph to the extent that they are inconsistent with the language in the cited statutes.
58. Defendant Cowles is without sufficient knowledge and therefore, denies the allegations in this paragraph.
59. Denied.
60. Defendant Cowles admits the content of the state statutes cited in this paragraph, but denies the allegations in this paragraph to the extent that they are inconsistent with the language in the cited statute.
61. Defendant Cowles admits the allegation in the first sentence of this paragraph. Defendant denies the remaining allegations in this paragraph.
62. Denied.
63. Defendant Cowles denies that he could have taken any action other than that permitted by law.
64. Defendant Cowles is without sufficient knowledge and therefore, denies the allegations in this paragraph.

65. Defendant Cowles is without sufficient knowledge and therefore, denies the allegations in this paragraph.
66. Defendant Cowles is without sufficient knowledge and therefore, denies the allegations in this paragraph.
67. Defendant Cowles is without sufficient knowledge and therefore, denies the allegations in this paragraph.
68. Denied.
69. Defendant Cowles denies the allegations in this paragraph.
70. Admitted.
71. Admitted
72. Defendant Cowles admits that the Florida election code was amended effective January 1, 2006, and the content of the state statute cited in this paragraph, but denies the allegations in this paragraph to the extent that they are inconsistent with the language in the cited statute.
73. Defendant Cowles admits the content of the state statute cited in this paragraph, but denies the allegations in this paragraph to the extent that they are inconsistent with the language in the cited statute.
74. Defendant Cowles reincorporates its responses to paragraphs 72 and 73, as the allegations in this paragraph are a summation of the Plaintiffs' allegations in paragraphs 72 and 73 of the Third Amended Complaint.
75. Defendant Cowles admits that there were changes to the Florida election law effective January 1, 2006, but denies the allegations in this paragraph to the extent that they are inconsistent with the changes in such law.
76. Defendant Cowles admits the content of the state statute cited in this paragraph, but denies the allegations in this paragraph to the extent that they are inconsistent with the language in the cited statute.
77. Defendant Cowles reincorporates his responses to paragraphs 75 and 76, as the allegations in this paragraph are a summation of the Plaintiffs' allegations in paragraphs 75 and 76 of the Third Amended Complaint.
78. Defendant Cowles admits the content of the state statutes cited in this paragraph, but denies the allegations in this paragraph to the extent that they are inconsistent with the language in the cited statutes.

79. Denied.
80. Defendant Cowles admits the content of the Florida Division of Elections' Guide to FVRS, dated September 5, 2005, but denies the allegations in this paragraph to the extent that they are inconsistent with the Florida Division of Elections' Guide to FVRS, dated September 5, 2005.
81. Defendant Cowles reincorporates his responses to paragraph 80, as the allegations in this paragraph are a summation of the Plaintiffs' allegations in paragraph 80 of the Third Amended Complaint.
82. Denied.
83. Defendant Cowles does not respond to the allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.
84. Defendant Cowles does not respond to the allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.
85. Defendant Cowles does not respond to the allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.
86. Defendant Cowles does not respond to the allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.
87. Defendant Cowles does not respond to the allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.
88. Defendant Cowles does not respond to the allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.
89. Defendant Cowles does not respond to the allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.
90. Defendant Cowles does not respond to the allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.
91. Defendant Cowles does not respond to the allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.
92. Defendant Cowles does not respond to the allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.
93. Defendant Cowles does not respond to the allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.

94. Defendant Cowles does not respond to the allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.
95. Defendant Cowles does not respond to the allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.
96. Defendant Cowles does not respond to the allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.
97. Defendant Cowles does not respond to the allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.
98. Defendant Cowles admits that changes to Florida's election laws came into effect on January 1, 2006.
99. Admitted to the extent that the allegations in this paragraph are consistent with the amendments in Florida law referenced therein; otherwise, Defendant denies the allegations in this paragraph.
100. Denied as the allegations in this paragraph pertain to the "grace period" that remains pending. Defendant Cowles does not respond to the extent that this paragraph pertains to any other claim pursuant to this Court's February 27, 2007 Order.
101. Defendant Cowles does not respond to the allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.
102. Defendant Cowles does not respond to the allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.
103. Defendant Cowles does not respond to the allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.
104. Defendant Cowles is without sufficient knowledge, and therefore, denies, the allegations in this paragraph.
105. Defendant Cowles is without sufficient knowledge, and therefore, denies, the allegations in this paragraph.
106. Defendant Cowles denies the allegations in this paragraph as they pertain to the "grace period" claim remaining against Defendant Cowles. Defendant Cowles does not respond to the extent that this paragraph pertains to any other claim pursuant to this Court's February 27, 2007 Order.
107. Defendant Cowles denies the allegations in this paragraph as they pertain to the "grace period" claim remaining against Defendant Cowles. Defendant Cowles does not respond to the extent that this paragraph pertains to any other claim pursuant to this Court's February 27, 2007 Order.

108. Defendant Cowles is without sufficient knowledge as to the allegations in this paragraph as they pertain to the “grace period” claim remaining against the Defendant Cowles, and therefore, must deny same. Defendant Cowles does not respond to the extent that this paragraph pertains to any other claim pursuant to this Court’s February 27, 2007 Order.
109. Defendant Cowles is without sufficient knowledge as to the allegation in this paragraph as they pertain to the “grace period” claim remaining against the Defendant Cowles, and therefore, must deny same. Defendant Cowles does not respond to the extent that this paragraph pertains to any other claim pursuant to this Court’s February 27, 2007 Order.
110. Defendant Cowles denies the allegations in this paragraph as they pertain to the “grace period” claim remaining against Defendant Cowles. Defendant Cowles does not respond to the extent that this paragraph pertains to any other claim pursuant to this Court’s February 27, 2007 Order.
111. Defendant Cowles is without sufficient knowledge as to the allegations in this paragraph, and therefore, must deny same as they pertain to the “grace period” claim remaining against the Defendant Cowles. Defendant Cowles does not respond to the extent that this paragraph pertains to any other claim pursuant to this Court’s February 27, 2007 Order.
112. Defendant Cowles is without sufficient knowledge as to the allegations in this paragraph, and therefore, must deny same, in this paragraph as they pertain to the “grace period” claim remaining against the Defendant Cowles, must deny same. Defendant Cowles does not respond to the extent that this paragraph pertains to any other claim pursuant to this Court’s February 27, 2007 Order.
113. Defendant Cowles denies the allegations in this paragraph, and therefore, must deny same, as they pertain to the “grace period” claim remaining against Defendant Cowles. Defendant Cowles does not respond to the extent that this paragraph pertains to any other claim pursuant to this Court’s February 27, 2007 Order.
114. Defendant Cowles is without sufficient knowledge as to the allegations in this paragraph, and therefore, must deny same, as they pertain to the “grace period” claim remaining against the Defendant Cowles. Defendant Cowles does not respond to the extent that this paragraph pertains to any other claim pursuant to this Court’s February 27, 2007 Order.
115. Defendant Cowles is without sufficient knowledge as to the allegations in this paragraph, and therefore, must deny same, as they pertain to the “grace period” claim remaining against the Defendant Cowles. Defendant Cowles does not respond to the extent that this paragraph pertains to any other claim pursuant to this Court’s February 27, 2007 Order.
116. Defendant Cowles is without sufficient knowledge as to the allegations in this paragraph, and therefore, must deny same, as they pertain to the “grace period” claim remaining against the Defendant Cowles. Defendant Cowles does not respond to the extent that this paragraph pertains to any other claim pursuant to this Court’s February 27, 2007 Order.

117. Defendant Cowles is without sufficient knowledge as to the allegations in this paragraph, and therefore, must deny same, as they pertain to the “grace period” claim remaining against the Defendant Cowles. Defendant Cowles does not respond to the extent that this paragraph pertains to any other claim pursuant to this Court’s February 27, 2007 Order.
118. Defendant Cowles is without sufficient knowledge as to the allegations in this paragraph, and therefore, must deny same, as they pertain to the “grace period” claim remaining against the Defendant Cowles. Defendant Cowles does not respond to the extent that this paragraph pertains to any other claim pursuant to this Court’s February 27, 2007 Order.
119. Defendant Cowles is without sufficient knowledge as to the allegations in this paragraph, and therefore, must deny same, as they pertain to the “grace period” claim remaining against the Defendant Cowles. Defendant Cowles does not respond to the extent that this paragraph pertains to any other claim pursuant to this Court’s February 27, 2007 Order.
120. Denied
121. Denied
122. Denied.
123. Denied.
124. Denied.
125. Denied.
126. Denied.
127. Denied.
128. Denied.
129. Defendant Cowles restates its responses to paragraphs 1-128 above as if fully set forth herein.
130. Defendant Cowles admits the content of the First and Fourteenth Amendments of the United States Constitution, but denies the remaining allegations in this paragraph to the extent that they are inconsistent with those Constitutional provisions.
131. Defendant Cowles denies the allegations in this paragraph to the extent that they relate to the remaining “grace period” claim. Defendant Cowles does not respond to the allegations in this paragraph relating to any other claim as such have been dismissed through this Court’s February 27, 2007 Order.
132. Denied.

133. Denied.
134. Denied.
135. Defendant Cowles restates its responses to paragraphs 1-128 above as if fully set forth herein.
136. Defendant Cowles admits the content of the First and Fourteenth Amendments of the United States Constitution, but denies the remaining allegations in this paragraph to the extent that they are inconsistent with those Constitutional provisions.
137. Defendant Cowles admits the content of Florida state law.
138. Denied.
139. Denied.
140. Denied.
141. Denied.
142. Denied.
143. Denied.
144. Defendant Cowles restates its responses to paragraphs 1-128 above as if fully set forth herein.
145. Defendant Cowles admits the content of the First and Fourteenth Amendments of the United States Constitution, but denies the remaining allegations in this paragraph to the extent that they are inconsistent with those Constitutional provisions.
146. Defendant Cowles does not respond to the allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.
147. Defendant Cowles denies the allegations in this paragraph to the extent that they relate to the remaining "grace period" claim. Defendant Cowles does not respond to the allegations in this paragraph relating to any other claim as such have been dismissed through this Court's February 27, 2007 Order.
148. Defendant Cowles denies the allegations in this paragraph to the extent that they relate to the remaining "grace period" claim. Defendant Cowles does not respond to the allegations in this paragraph relating to any other claim as such have been dismissed through this Court's February 27, 2007 Order.

149. Defendant Cowles does not respond to the allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.
150. Defendant Cowles does not respond to the allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.
151. Defendant Cowles does not respond to the allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.
152. Defendant Cowles does not respond to the allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.
153. Defendant Cowles does not respond to the allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.
154. Defendant Cowles does not respond to the allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.
155. Defendant Cowles does not respond to the allegations in this paragraph as Defendant Cowles is not subject to this claim pursuant to this Court's February 27, 2007 Order.

#### **AFFIRMATIVE DEFENSES**

1. As and for his First Affirmative Defense, Defendant Cowles states that Plaintiffs have failed to state a claim under Rules 12(b)(6) and 12(c) of the Federal Rules of Civil Procedure. As found by this Court in its February 27, 2007 Order, "Under state and federal law, Defendant Supervisors have no discretion and cannot be held liable [for failure to provide a grace period]."

2. As and for his Second Affirmative Defense, Defendant Cowles asserts that Individual Plaintiff Lanman lacks standing on the sole remaining claim relating to the "grace period." Individual Plaintiff, Lanman submitted his application in May, 2004 - several months prior to book closing for either the 2004 primary election or the November, 2004, general election. Defendant Cowles' records indicate that he was sent timely notice that his voter registration application was incomplete. Mr. Lanman failed to take any action to remedy his voter registration application prior to the registration deadlines for the 2004 elections. Mr. Lanman is

now registered to vote in Osceola County, Florida, and is an eligible voter in that County and the state of Florida as of February, 2007. As a result, Mr. Lanman has no claim relating to an alleged failure to provide a “grace period,” the sole claim remaining in this case. Moreover, Plaintiff Lanman’s claim is moot, to the same extent Plaintiff Diaz’s claim is moot, as he is now a Florida registered voter. The remaining claims in the Third Amended Complaint have been dismissed against Defendant Cowles pursuant to this Court’s February 27, 2007 Order.

3. As and for his Third Affirmative Defense, Defendant Cowles asserts that Plaintiffs failed to mitigate their damages so their claims are barred or must be reduced accordingly.

4. As and for his Fourth Affirmative Defense, Defendant Cowles asserts that Plaintiffs injuries, if any, were caused by their own negligence or wrongdoing. Accordingly, any claim against Defendant Cowles is barred or reducible to the full extent of Plaintiffs’ negligence or wrongdoing.

5. As and for his Fifth Affirmative Defense, Defendant Cowles asserts that Plaintiffs’ injuries, if any, were caused by the negligence or wrongdoing of third parties. Accordingly, any claim against Defendant Cowles is barred or reducible to the full extent of negligence or wrongdoing of third parties.

6. As and for his Fifth Affirmative Defense, Defendant Cowles asserts that he is entitled to a set-off for any proceeds received by Plaintiffs for any injuries or damages alleged against Defendant Cowles.

7. As and for his Seventh Affirmative Defense, Defendant Cowles asserts that as an arm of the state for the State of Florida with regards to the administration of statewide general elections and the processing of voter registration applications, Defendant Cowles is immune for suit for damages pursuant to the 11<sup>th</sup> Amendment of the United States Constitution.

WHEREFORE, Defendant Cowles, William Cowles, Orange County Supervisor of Elections, requests this Court to enter judgment in his favor, with Plaintiffs to bear Defendant Cowles' costs of suit, including attorney's fees pursuant to 42 U.S.C. § 1988.

Dated this 29 day of March, 2007.

Respectfully submitted,

On Behalf of Defendant, William Cowles  
Goren, Cherof, Doody & Ezrol, P.A.  
3099 East Commercial Boulevard, Suite 200  
Fort Lauderdale, FL 33308  
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BY: Michael D. Cirullo, Jr.  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on March 29, 2007, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices for Electronic filing.

BY: Michael D. Cirullo, Jr.  
MICHAEL D. CIRULLO, JR.

**SERVICE LIST**

Diaz, et al. v. Hood, et al., Case Number 04-22572-CIV-King O'Sullivan

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