

UNITED STATES DISTRICT COURT
THE SOUTHERN DISTRICT OF FLORIDA

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

EMMA YAIZA DIAZ; AMERICAN
FEDERATION OF LABOR AND CONGRESS
OF INDUSTRIAL ORGANIZATIONS;
AMERICAN FEDERAL OF STATE, COUNTY
AND LOCAL EMPLOYEES, AFL-CIO;
FLORIDA PUBLIC EMPLOYEES COUNCIL
79, AFSCME, AFL-CIO; AND SERVICE
EMPLOYEES INTERNATIONAL UNION,
AFL-CIO,

Plaintiffs,

v.

KURT S. BROWNING, Secretary of State
Of Florida; BRENDA SNIPES, Broward
County Supervisor of Elections; DAVID
STAFFORD, Duval County Supervisor of
Elections; CONSTANCE KAPLAN, Miami-Dade
County Supervisor of Elections; BILL
ANDERSON, Orange County Supervisor of
Elections and ARTHUR ANDERSON, Palm
Beach County Supervisor of Elections,

Defendants.

**DEFENDANT, ARTHUR ANDERSON, PALM BEACH COUNTY SUPERVISOR
OF ELECTIONS, ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFFS' THIRD AMENDED COMPLAINT**

COMES NOW, Defendant, Arthur Anderson, Palm Beach County
Supervisor of Elections ("Anderson"), by and through undersigned
counsel and pursuant to this Court's February 27, 2007 Order and
files this Answer and Affirmative Defenses to Plaintiffs' Third
Amended Complaint and states as follows:

ANSWER

1. Denied.

2. Denied and Defendant Anderson does not respond to the allegations in this paragraph as Defendant Anderson is not subject to this claim pursuant to this Court's February 27, 2007 Order.

3. Defendant Anderson does not respond to the allegations in this paragraph as Defendant Anderson is not subject to this claim pursuant to this Court's February 27, 2007 Order.

4. Denied.

5. Denied.

6. Denied.

7. Without knowledge, therefore, denied.

8. Denied.

9. Denied.

10. Denied.

11. Denied and adds that Defendant Anderson is not subject to this claim pursuant to this Court's February 27, 2007 Order.

12. Defendant Anderson does not respond to the allegations in this paragraph as Defendant Anderson is not subject to this claim pursuant to this Court's February 27, 2007 Order.

13. Defendant Anderson does not respond to the allegations in this paragraph as Defendant Anderson is not subject to this claim pursuant to this Court's February 27, 2007 Order.

14. Defendant Anderson does not respond to the allegations in this paragraph as Defendant Anderson is not subject to this claim pursuant to this Court's February 27, 2007 Order.

15. Defendant Anderson does not respond to the allegations in this paragraph as Defendant Anderson is not subject to this claim pursuant to this Court's February 27, 2007 Order.

16. Defendant Anderson does not respond to the allegations in this paragraph as Defendant Anderson is not subject to this claim pursuant to this Court's February 27, 2007 Order, otherwise, denied.

17. Defendant Anderson does not respond to the allegations in this paragraph as Defendant Anderson is not subject to this claim pursuant to this Court's February 27, 2007 Order.

18. Defendant Anderson does not respond to the allegations in this paragraph as Defendant Anderson is not subject to this claim pursuant to this Court's February 27, 2007 Order, otherwise without knowledge, therefore, denied.

19. Denied.

20. Defendant Anderson denies the allegations in this paragraph, and further adds no response is necessary pursuant to this Court's February 27, 2007 Order.

21. Denied.

22. Denied.

23. Denied.

24. Defendant Anderson admits the actions available under 28 USC §§ 1331, 1343(a)(4) and 1367, and that this court would have subject matter jurisdiction over a claim under these statutes, otherwise denied.

25. Admitted that remedies are available, otherwise, denied.

26. Admitted.

27. Defendant Anderson is without knowledge, therefore, denied.

28. Defendant Anderson is without knowledge, therefore, denied.

29. Defendant Anderson is without knowledge, therefore, denied.

30. Defendant Anderson is without knowledge, therefore, denied.

31. Defendant Anderson is without knowledge, therefore, denied.

32. Defendant Anderson is without knowledge, therefore, denied.

33. Defendant Anderson is without knowledge, therefore, denied.

34. Defendant Anderson is without knowledge, therefore, denied.

35. Defendant Anderson is without knowledge, therefore, denied.

36. Defendant Anderson is without knowledge, therefore, denied.

37. Defendant Anderson is without knowledge, therefore, denied.

38. Defendant Anderson is without knowledge, therefore, denied.

39. Defendant Anderson is without knowledge, therefore, denied.

40. Defendant Anderson is without knowledge, therefore, denied.

41. Defendant Anderson is without knowledge, therefore, denied.

42. Defendant Anderson is without knowledge, therefore, denied.

43. Defendant Anderson is without knowledge, therefore, denied.

44. Defendant Anderson admits that Defendant Cobb was Secretary of State from January 2006 through the date of filing of the Third Amended Complaint. Defendant Anderson admits the content of the statutes cited in this paragraph, otherwise, denied.

45. Defendant Anderson admits the content of the state and federal statutes cited, otherwise, denied.

46. Defendant Anderson admits the content of the statutes cited, otherwise, denied.

47. Defendant Anderson admits the content of the statutes cited, otherwise, denied.

48. Defendant Anderson admits the content of the statutes cited, otherwise, denied.

49. Admitted.

50. Defendant Anderson admits that he is Supervisor of Elections in Palm Beach 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 admits Plaintiffs allege he is sued in his official capacity.

51. Defendant Anderson admits the statutes speak for themselves, otherwise, denied.

52. Admitted.

53. Admitted.

54. Defendant Anderson admits the provisions of the First, Fifth and Fourteenth Amendments to the Constitution, otherwise, denied.

55. Admitted.

56. Admitted.

57. Admitted.

58. Defendant Anderson is without knowledge, therefore, denied.

59. Denied.

60. Admitted.

61. Defendant Anderson admits the allegations in the first sentence of this paragraph, otherwise, denied.

62. Denied.

63. Denied.

64. Defendant Anderson is without knowledge, therefore, denied.

65. Defendant Anderson is without knowledge, therefore, denied.

66. Defendant Anderson is without knowledge, therefore, denied.

67. Defendant Anderson is without knowledge, therefore, denied.

68. Denied.

69. Denied.

70. Admitted.

71. Defendant Anderson is without knowledge, therefore, denied.

72. Defendant Anderson admits that section 97.053(7), F.S., effective January 1, 2006, speaks for itself, otherwise, denied.

73. Defendant Anderson admits that section 97.052(6), F.S., speaks for itself, otherwise, denied.

74. Defendant Anderson adopts his responses to paragraphs 72 and 73, to the extent applicable, otherwise, denied.

75. Denied.

76. Defendant Anderson admits that section 97.055, F.S., speaks for itself, otherwise, denied.

77. Denied.

78. Defendant Anderson admits the cited statutes, otherwise, denied.

79. Denied.

80. Defendant Anderson admits the actual contents of the Florida Division of Elections' Guide to FVRS of 2005, otherwise, denied.

81. Defendant Anderson is without knowledge, therefore, denied.

82. Denied.

83. Defendant Anderson does not respond to the allegations in this paragraph as Defendant Anderson is not subject to this claim pursuant to this Court's February 27, 2007 Order.

84. Defendant Anderson does not respond to the allegations in this paragraph as Defendant Anderson is not subject to this claim pursuant to this Court's February 27, 2007 Order.

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96. Defendant Anderson does not respond to the allegations in this paragraph as Defendant Anderson is not subject to this claim pursuant to this Court's February 27, 2007 Order.

97. Defendant Anderson does not respond to the allegations in this paragraph as Defendant Anderson is not subject to this claim pursuant to this Court's February 27, 2007 Order.

98. Defendant Anderson admits that changes to Florida's election laws came into effect on January 1, 2006, otherwise, denied.

99. Admitted to the extent that the allegations in this paragraph are consistent with Florida law referenced therein; otherwise, denied.

100. Denied.

101. Defendant Anderson admits section 97.052(2), F.S. (2006), speaks for itself, otherwise, denied.

102. Defendant Anderson does not respond to the allegations in this paragraph as Defendant Anderson is not subject to this claim pursuant to this Court's February 27, 2007 Order.

103. Defendant Anderson does not respond to the allegations in this paragraph as Defendant Anderson is not subject to this claim pursuant to this Court's February 27, 2007 Order.

104. Defendant Anderson is without knowledge, therefore, denied.

105. Defendant Anderson is without knowledge, therefore, denied.

106. Defendant Anderson is without knowledge, therefore, denied.

107. Denied.

108. Defendant Anderson is without knowledge, therefore, denied.

109. Defendant Anderson is without knowledge, therefore, denied.

110. Defendant Anderson is without knowledge, therefore, denied.

111. Defendant Anderson is without knowledge, therefore, denied.

112. Defendant Anderson is without knowledge, therefore, denied.

113. Defendant Anderson is without knowledge, therefore, denied.

114. Defendant Anderson is without knowledge, therefore, denied.

115. Defendant Anderson is without knowledge, therefore, denied.

116. Defendant Anderson is without knowledge, therefore, denied.

117. Defendant Anderson is without knowledge, therefore, denied.

118. Defendant Anderson is without knowledge, therefore, denied.

119. Defendant Anderson is without knowledge, therefore, denied.

120. Denied.

121. Denied.

122. Denied.

123. Denied.

124. Denied.

125. Denied.

126. Denied.

127. Denied.

128. Denied.

129. Defendant Anderson restates his responses to paragraphs 1-128 above as if fully set forth herein.

130. Defendant Anderson admits the content of the First and Fourteenth Amendments of the United States Constitution, otherwise, denied.

131. Denied.

132. Denied.

133. Denied.

134. Denied.

135. Defendant Anderson restates his responses to paragraphs 1-128 above as if fully set forth herein.

136. Defendant Anderson 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 Anderson admits correct statements of Florida law, otherwise, denied.

138. Denied.

139. Denied.

140. Denied.

141. Denied.

142. Denied.

143. Denied.

144. Defendant Anderson restates his responses to paragraphs 1-128 above as if fully set forth herein.

145. Defendant Anderson admits the content of the First and Fourteenth Amendments of the United States Constitution, otherwise, denied.

146. Defendant Anderson does not respond to the allegations in this paragraph as Defendant Anderson is not subject to this claim pursuant to this Court's February 27, 2007 Order.

147. Defendant Anderson does not respond to the allegations in this paragraph relating to any claim as such have been dismissed through this Court's February 27, 2007 Order, otherwise, denied.

148. Defendant Anderson does not respond to the allegations in this paragraph relating to any claim as such have been dismissed through this Court's February 27, 2007 Order.

149. Defendant Anderson does not respond to the allegations in this paragraph as Defendant Anderson is not subject to this claim pursuant to this Court's February 27, 2007 Order.

150. Defendant Anderson does not respond to the allegations in this paragraph as Defendant Anderson is not subject to this claim pursuant to this Court's February 27, 2007 Order.

151. Defendant Anderson does not respond to the allegations in this paragraph as Defendant Anderson is not subject to this claim pursuant to this Court's February 27, 2007 Order.

152. Defendant Anderson does not respond to the allegations in this paragraph as Defendant Anderson is not subject to this claim pursuant to this Court's February 27, 2007 Order.

153. Defendant Anderson does not respond to the allegations in this paragraph as Defendant Anderson is not subject to this claim pursuant to this Court's February 27, 2007 Order.

154. Defendant Anderson does not respond to the allegations in this paragraph as Defendant Anderson is not subject to this claim pursuant to this Court's February 27, 2007 Order.

155. Defendant Anderson does not respond to the allegations in this paragraph as Defendant Anderson is not subject to this claim pursuant to this Court's February 27, 2007 Order.

AFFIRMATIVE DEFENSES

1. As his First Affirmative Defense, Defendant Anderson 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 his Second Affirmative Defense, Defendant Anderson asserts that Plaintiffs failed to mitigate their damages so their claims are barred or must be reduced accordingly.

3. As his Third Affirmative Defense, Defendant Anderson asserts that Plaintiffs injuries, if any, were caused by their own negligence or wrongdoing. Accordingly, any claim against Defendant Anderson is barred or reducible to the full extent of Plaintiffs' negligence or wrongdoing.

4. As his Fourth Affirmative Defense, Defendant Anderson asserts that Plaintiffs' injuries, if any, were caused by the negligence or wrongdoing of third parties. Accordingly, any claim against Defendant Anderson is barred or reducible to the full extent of negligence or wrongdoing of third parties.

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

6. As his Sixth Affirmative Defense, Defendant Anderson 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 Anderson is immune from suit for damages pursuant to the 11th Amendment of the United States Constitution.

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

Respectfully submitted this 29th day of March, 2007.

s/Ronald A. Labasky

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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 following Service List via electronic mail or facsimile and U.S. Mail:

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