

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 08-CV-2321-JLK-KMT

COMMON CAUSE OF COLORADO,
on behalf of itself and its members;
MI FAMILIA VOTA EDUCATION FUND; and
SERVICE EMPLOYEES INTERNATIONAL UNION,
on behalf of itself and its members,

Plaintiffs,

v.

MIKE COFFMAN, in his official capacity as Secretary of State
for the State of Colorado,

Defendant.

SECRETARY OF STATE’S ANSWER

Defendant Mike Coffman, in his official capacity as the Colorado Secretary of State (the “Secretary”), by and through his attorneys, the Office of the Colorado Attorney General, hereby answers Plaintiffs’ Complaint as follows:

ANSWER TO SECTION TITLED “INTRODUCTION”

1. Regarding ¶1 of the Complaint, the Secretary admits that Plaintiffs bring this action to prevent the disenfranchisement of their members and citizens they registered to vote. The Secretary denies that Plaintiffs’ members or other

citizens have been disenfranchised as alleged by Plaintiffs. The Secretary denies the remaining allegations of ¶ 1.

2. With regard to ¶ 2 of the Complaint, the Secretary admits that the Plaintiffs bring their challenges under the National Voter Registration Act of 1993 (NVRA). The Secretary admits that some voters' registrations were updated, transferred or cancelled after May 13, 2008, but denies that these actions violated the NVRA. The Secretary further denies that new applicants' registrations are "cancelled" when a voter information card is returned as undeliverable. The Secretary affirmatively states that such applicants are never actually registered to vote under Colorado law. The Secretary denies that he or his Office have "purged" any voters from the voter registration rolls. Maintenance of the voter registration rolls (including registrations, updates, transfers and cancellations) are conducted by county election officials. Voters are never "purged" from Colorado's voter registration rolls. The Secretary denies the remaining allegations of ¶ 2.

ANSWER TO JURISDICTION AND VENUE

3. With regard to ¶ 3 of the Complaint, the Secretary admits that the Court may have jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343(a)(3)

and (4), and 42 U.S.C. § 1983, but denies that Plaintiffs have asserted sufficient facts to establish standing to warrant jurisdiction.

4. Regarding ¶ 4 of the Complaint, the Secretary admits that venue is proper in this district.

ANSWER TO SECTION TITLED “PARTIES”

5. The Secretary is without sufficient information to admit or deny the allegations of ¶¶ 5 – 15 of the Complaint, and therefore denies the same.

6. With respect to the allegations in ¶ 16, the Secretary admits that Plaintiffs are suing him in his official capacity as Secretary of State, and that his business address is 1700 Broadway, Denver, Colorado 80290. The Secretary admits he is the chief election official for the State of Colorado. The Secretary denies the remaining allegations of ¶ 16 as legal conclusions or incomplete summaries of federal and state law.

ANSWER TO SECTION TITLED “LEGAL BACKGROUND”

7. The allegations in paragraphs 17-23 of the Complaint are incomplete summaries of federal and state law, and are therefore denied.

ANSWER TO SECTION TITLED “FACTUAL BACKGROUND”

8. With respect to the allegations in ¶ 24, the Secretary admits that the New York Times published an article on October 9, 2008 regarding Colorado’s voter registration rolls, but denies the assertions therein. The Secretary admits that he issued a news release on October 9, 2008, and that Plaintiffs have accurately summarized the numbers stated in the press release. The Secretary denies the remaining allegations of ¶ 24.

9. The Secretary denies the allegations of ¶ 25 of the Complaint.

10. With respect to the allegations in ¶¶ 26 – 29, the Secretary admits that Plaintiffs retained Professor Jonathan Nagler to analyze information they provided to him relating to transfers, updates and cancellations within Colorado’s voter registration rolls. The Secretary is without sufficient information to admit or deny the remaining allegations of ¶¶ 26 - 29, and therefore denies the same.

11. Regarding the allegations in ¶¶ 30 – 32, the Secretary admits that, in response to an open records request from the Plaintiffs, the Office provided Plaintiffs with a list of voters whose registrations were updated, transferred, or cancelled, and applicants who failed the 20-day provision, between August 2007 and September 25, 2008. The Secretary specifically denies that any voter was

“purged” from the voter registration rolls. The Secretary is without sufficient information to admit or deny the remaining allegations of ¶¶ 30 – 32, and therefore denies the same.

12. With respect to the allegations in ¶ 33 of the Complaint, the Secretary admits that on October 22, 2008 representatives of the Secretary’s Office met with attorneys for the Obama and McCain presidential campaigns, who also represent the Republican and Democrat parties, to discuss election-related issues. The Secretary further admits that an attorney with the Colorado Republican Party earlier provided the Secretary’s Office with a list of voters with potential duplicate registrations. The Secretary denies the remaining allegations of ¶ 33.

13. The Secretary denies the allegations of ¶ 34 of the Complaint.

14. The Secretary lacks sufficient information to admit or deny the allegations of ¶¶ 35-37, and therefore denies the same.

ANSWER TO SECTION TITLED “CLAIMS”

COUNT I

15. With regard to ¶ 38 of the Complaint, the Secretary re-alleges and incorporates by reference his responses to ¶¶ 1-37.

16. The Secretary denies the allegations of ¶ 39 as legal conclusions and an incomplete statement of federal law.

17. The Secretary denies the allegations of ¶¶ 40-49.

COUNT II

18. With regard to ¶ 50 of the Complaint, the Secretary re-alleges and incorporates by reference his responses to ¶¶ 1-49.

19. The Secretary denies the allegations of ¶¶ 51-55 as legal conclusions and incomplete statements of federal and state law.

ANSWER TO PRAYER FOR RELIEF

20. The Secretary affirmatively states that the parties' Stipulated Preliminary Injunction addresses Plaintiffs' requests for relief with respect to the November 4, 2008 general election. The Secretary denies that Plaintiffs are entitled to any additional relief requested.

GENERAL DENIAL

21. The Secretary denies each and every allegation of the Complaint, express or implied, not specifically admitted in this Answer.

AFFIRMATIVE DEFENSES

22. One or more of Plaintiffs lack organizational or member standing.

Plaintiffs Common Cause and SEIU have failed to identify a single member whose voter registration was “purged” in violation of the NVRA, let alone a single member who has been disenfranchised by any Colorado program, the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters within 90 days of a primary or general election for federal office. None of the Plaintiffs has made allegations sufficient to establish a concrete and imminent injury to a legally protected interest of their organizations.

23. Plaintiffs’ Complaint fails to state claims for which relief may be granted. None of the voter registrations that were updated, transferred or cancelled within 90 days before the 2008 primary or general election violated the NVRA. The NVRA specifically excepts removal of names within the 90-day window on the following grounds: (i) request of the registrant; (ii) criminal conviction or mental incapacity; (iii) death of the registrant; or (iv) correction of registration records pursuant to the NVRA. All registration records that were updated, transferred, or cancelled fell within one of these exceptions. The legislative history of the NVRA plainly states that the “request of the registrant” exception to the 90-

day rule “would include actions that result in the registrant being registered at a new address, such as registering in a new jurisdiction” House Committee Report at 14; Senate Committee Report at 31. This precisely describes those Colorado voters who moved out of state or to a different county within Colorado and re-registered in their new location; such individuals are presently registered to vote in their new location, and merely had their outdated or duplicate registration properly cancelled. Persons who failed the 20-day provision under Colorado law are not actually registered under Colorado law; thus, their registrations are not “cancelled” or “removed” in violation of the NVRA.

24. Plaintiffs’ requests for preliminary relief are moot. The parties’ Stipulated Preliminary Injunction established a process for identifying and reviewing the provisional ballots cast by any persons whose voter registrations were cancelled or failed the 20-day rule in advance of the November 2008 general election.

25. The State has strong and/or compelling interests in enforcing federal and Colorado’s election laws. Two of the main purposes of the NVRA are “to protect the integrity of the electoral process;” and “to ensure that accurate and current voter registration rolls are maintained.” The State’s actions here comport

with those interests, and do so without systematically disenfranchising eligible voters.

WHEREFORE, the Secretary requests that the Court grant judgment in his favor and against the Plaintiffs on all claims, and that all of Plaintiffs' claims be dismissed with prejudice. The Secretary further requests that this Court grant such additional relief as the Court may deem just and proper, including an award of the Secretary's costs and attorneys' fees incurred in defending this action.

Respectfully submitted this 17th day of November, 2008.

JOHN W. SUTHERS
Attorney General

Original signature on file
/s/ Maurice Knaizer

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CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2008, I served a true and complete copy of the within **SECRETARY OF STATE'S ANSWER** upon all parties by the method indicated below:

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s/ Thomas R. Bovee

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