

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</p> <p>1437 Bannock St. Denver, Colorado 80202</p> <hr/> <p>SCOTT GESSLER, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE FOR THE STATE OF COLORADO,</p> <p>Plaintiff,</p> <p>v.</p> <p>DEBRA JOHNSON, IN HER OFFICIAL CAPACITY AS THE CLERK AND RECORDER FOR THE CITY AND COUNTY OF DENVER</p> <p>Defendant,</p> <p>COLORADO COMMON CAUSE and GILBERT ORTIZ, in his official capacity as the Clerk and Recorder for the County of Pueblo</p> <p>Intervenors-Defendants.</p>	<p>FILED Document CO Denver County District Court 2nd JD Filing Date: Feb 6 2012 4:01PM MST Filing ID: 42337337 Review Clerk: Charmaine Bright</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
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<p>SECRETARY’S ANSWER TO AMENDED COUNTERCLAIMS OF COLORADO COMMON CAUSE AND AFFIRMATIVE DEFENSES</p>	

Scott Gessler, in his official capacity as the Secretary of State for the State of Colorado (hereinafter “the Secretary”) hereby submits his Answer to the Amended Counterclaims of Colorado Common Cause and Affirmative Defenses.

ANSWER TO AMENDED COUNTERCLAIMS

1. With respect to the allegation in paragraph 40 of the Amended Counterclaims, the Secretary admits that Colorado Common Cause is a state chapter of Common Cause and that the stated purpose of Common Cause is to ensure “open, honest, and accountable government at the national.” The Secretary is without information sufficient to form a belief as to the truth of the averment that Colorado Common Cause’s members include at least 35 registered voters in Denver County who are deemed “inactive failed to vote” and denies the same. The Secretary denies the remaining allegations.

2. The Secretary admits the allegations in paragraphs 41-44 of the Amended Counterclaims.

3. With respect to paragraph 45 of the Amended Counterclaims, the Secretary admits the allegations in the first sentence. The second sentence is an incomplete and inaccurate statement of the law and is denied.

4. The Secretary admits the allegations in paragraphs 46-47 of the Amended Counterclaims.

5. The Secretary admits that the quote contained in paragraph 48 of the Amended Counterclaims contains a partial statement of the law but denies that it is a complete and fully accurate statement of the law.

6. The Secretary admits that the quote contained in paragraph 49 of the Amended Counterclaims contains a partial statement of law but denies that it is a complete and fully accurate statement of the law. The Secretary admits that registered electors who are deemed inactive by virtue of their failure to vote in a general election are referred to as “inactive failed to vote.”

7. With respect to the allegations in paragraph 50 of the Amended Counterclaims, the Secretary admits that voters designated as “inactive failed to vote” may vote in a general election.

8. The Secretary denies the allegation in paragraph 51 of the Amended Counterclaims that the Secretary has interpreted the law to prohibit election officials from mailing ballots to all voters designated as “inactive failed to vote.” The Secretary affirmatively states that voters designated as “inactive failed to vote” may vote by mail if they timely notify the proper election officials. The Secretary denies the allegation that he brought suit to permanently enjoin the Denver County Clerk from mailing to all voters designated as “inactive failed to vote.”

9. The Secretary is without information sufficient to form a belief as to the truth of the matters asserted in paragraph 52-55 of the Amended Counterclaims and denies the same.

10. In response to paragraph 56 of the Amended Counterclaims, the Secretary incorporates his answers to paragraphs 40-55 of the Amended Counterclaims.

11. The Secretary denies the allegation in paragraph 57 of the Amended Counterclaims.

12. In response to paragraph 58 of the Amended Counterclaims, the Secretary incorporates his answers to paragraphs 40-57.

13. In response to paragraph 59 of the Amended Counterclaims, the Secretary admits that the right to vote is fundamental but denies the remaining allegations.

14. The Secretary denies the allegations in paragraphs 60 and 61 of the Amended Counterclaims.

15. With respect to the allegations in paragraph 62 of the Amended Counterclaims, the Secretary admits that political expression and the right to vote are constitutional rights but denies the remaining allegations.

16. The Secretary denies the allegations in paragraph 63 of the Amended Counterclaims.

AFFIRMATIVE DEFENSES

1. Colorado Common Cause does not have standing.

2. Colorado Common Cause has failed to state a claim under the Election Code upon which relief may be granted because the Election Code does not authorize clerks to send mail ballots to voters who are designated as “inactive-failed to vote.”

3. Colorado Common Cause has failed to state valid constitutional claims upon which relief may be granted because inactive voters are not denied the right to vote and voters categorized as “active” are not similarly situated to voters categorized as “inactive-failed to vote.”

4. Common Cause fails to allege that the membership of Common Cause includes racial or ethnic minorities who are categorized as “inactive failed to vote.”

5. Common Cause fails to meet the pleading requirement under *Washington v. Davis*, 426 U.S. 229 (1976).

6. Any alleged disparity between and among racial or ethnic groups is not purposeful or intentional.

WHEREFORE, the Secretary requests that the Court enter judgment in his favor and against Colorado Common Cause.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **SECRETARY'S ANSWER TO AMENDED COUNTERCLAIMS OF COLORADO COMMON CAUSE AND AFFIRMATIVE DEFENSES** upon all parties herein by LexisNexis File and Serve this 6th day of February, 2012, as follows:

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