

<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: Oct 03 2012 05:49PM MDT Filing ID: 46796149 Review Clerk: Annie Keirnes</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
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<p>SECRETARY’S ANSWER AND AFFIRMATIVE DEFENSES TO COLORADO COMMON CAUSE’S SECOND AMENDED COUNTERCLAIM</p>	

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

ANSWER TO SECOND AMENDED COUNTERCLAIM

1. With respect to the allegation in paragraph 1, 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, state, and local levels.” The Secretary is without information sufficient to form a belief as to the truth of the allegation that Colorado Common Cause’s members include over 35 registered voters in Denver County who are designated as “Inactive – Failed to Vote,” and denies the same. The Secretary denies the remaining allegations in paragraph 1.

2. The Secretary admits the allegations in paragraphs 2 through 4.

3. Paragraph 5 contains an incomplete and inaccurate statement of the law, and is denied.

4. The Secretary is without information sufficient to form a belief as to the truth of the allegations in paragraphs 6 and 7, and denies the same.

5. The first sentence of paragraph 8 contains an incomplete and inaccurate statement of the law, and is denied. The Secretary admits the allegation in the second sentence of paragraph 8.

6. The Secretary denies the allegations in paragraph 9.

7. The Secretary admits the allegation in the first sentence of paragraph 10. The second sentence of paragraph 10 contains an incomplete and inaccurate statement of the law, as well as legal argument, and is denied.

8. The Secretary admits the allegations in paragraph 11.

9. The Secretary denies the allegation in the first sentence of paragraph 12 that he brought suit to permanently enjoin the Denver County Clerk from mailing to all voters designated as “Inactive – Failed to Vote.” The Secretary further denies the allegation in the second sentence of paragraph 12 that he 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 admits the allegation in the third sentence of paragraph 12.

10. The Secretary admits the allegations in paragraph 13.

11. The Secretary admits that paragraph 14 correctly restates 8 CCR 1505-1, Rule 12.4.1(d).

12. The Secretary admits that paragraph 15 correctly restates 8 CCR 1505-1, Rule 13.19.

13. The Secretary denies the allegations in paragraphs 16 and 17.

14. The Secretary is without information sufficient to form a belief as to the truth of the matters asserted in paragraphs 18 through 20, and denies the same.

15. In response to paragraph 21, the Secretary incorporates his answers to paragraphs 1 through 20 as though fully set forth herein.

16. The Secretary denies the allegation in paragraph 22.

17. In response to paragraph 23, the Secretary incorporates his answers to paragraphs 1 through 22 as though fully set forth herein.

18. In response to paragraph 24, the Secretary admits that the right to vote is fundamental, but denies the remaining allegations.

19. The Secretary denies the allegations in paragraphs 25 through 27.

20. In response to paragraph 28, the Secretary incorporates his answers to paragraphs 1 through 27 as though fully set forth herein.

21. In response to paragraph 29, the Secretary admits that the right to vote is fundamental, but denies the remaining allegations.

22. The Secretary denies the allegations in paragraphs 30 through 32.

AFFIRMATIVE DEFENSES TO SECOND AMENDED COUNTERCLAIM

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 respectfully requests that the Court enter judgment in his favor and against Colorado Common Cause.

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Pursuant to C.R.C.P. 121, § 1-26(9), the original of this document with original signatures is maintained in the offices of the Colorado Attorney General, 1525 Sherman Street, Denver, CO 80203, and will be made available for inspection by other parties or the Court upon request.

