

DISTRICT COURT, CITY AND COUNTY OF DENVER,
COLORADO

Court Address:
1437 Bannock Street
Denver, CO 80202
(720) 865-7800

Plaintiffs: DANIEL KLAWITTER, and REED
NORWOOD,

v.

Defendants: RYAN FRAZIER; JULIAN JAY COLE; and
MIKE COFFMAN, in his official capacity as Secretary of
State for the State of Colorado

Attorneys for Defendants Ryan Frazier and Julian Jay Cole:

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Δ COURT USE ONLY Δ

Case Number: 08cv4547

Courtroom: 18

DEFENDANTS FRAZIER AND COLE'S ANSWER

Defendants Ryan Frazier and Julian Jay Cole (together "*Frazier*") by and through their attorneys Hackstaff Gessler LLC and John Berry submit this *Answer* ("*Answer*") to the *Verified*

C.R.S. § 1-40-118(1) *Protest and Complaint* (“*Complaint*”) file by plaintiffs Daniel Klawitter and R. Reed Norwood (together “*Klawitter*”), alleging and stating with respect to each numbered paragraph of the Amended Complaint, as follows:

I. Parties and Venue

1. Frazier admits the allegations contained in Paragraph 1 of the Complaint.
2. Frazier admits the allegations contained in Paragraph 2 of the Complaint.
3. Frazier admits that Ryan Frazier and Julian Jay Cole are the designated representatives for an initiative to amend the Colorado Constitution and that the initiative was introduced as Initiative 2007-2008 No. 41 and is now denominated “Amendment 47.” Frazier avers that the initiative speaks for itself.
4. Frazier admits the allegations contained in Paragraph 4 of the Complaint.
5. Frazier denies the allegations contained in Paragraph 5 of the Complaint.

II. General Allegations

6. Frazier avers that the statute speaks for itself.
7. Frazier avers that the statute speaks for itself.
8. Frazier admits the allegations contained in Paragraph 8 of the Complaint.
9. Frazier admits the allegations contained in Paragraph 9 of the Complaint.
10. Frazier admits that individuals were paid to obtain signatures, but denies all remaining allegations contained in Paragraph 10 of the Complaint.
11. Frazier denies the allegations contained in Paragraph 11 of the Complaint.
12. Frazier admits the allegations contained in Paragraph 12 of the Complaint.
13. The allegations contained in Paragraph 13 are subject to the *Partial Motion to Dismiss*.
14. Frazier admits the allegations contained in Paragraph 14 of the Complaint.
15. Frazier denies the allegations contained in Paragraph 15 of the Complaint.

16. Frazier denies the allegations contained in Paragraph 16 of the Complaint.
17. Frazier denies the allegations contained in Paragraph 17 of the Complaint.
18. Frazier avers that the statute speaks for itself.
19. Frazier denies the allegations contained in Paragraph 19 of the Complaint.
20. Frazier is without sufficient knowledge to answer the allegations, and so, therefore, denies all allegations contained in Paragraph 20 of the Complaint.
21. Frazier is without sufficient knowledge to answer the allegations, and so, therefore, denies all allegations contained in Paragraph 21 of the Complaint.
22. Frazier admits the allegations contained in Paragraph 22 of the Complaint.
23. Frazier admits the allegations contained in Paragraph 23 of the Complaint.
24. Frazier admits the allegations contained in Paragraph 24 of the Complaint.
25. Frazier admits the allegations contained in Paragraph 25 of the Complaint.
26. Frazier admits the allegations contained in Paragraph 26 of the Complaint.
27. Frazier avers that the statute speaks for itself.
28. Frazier denies the allegations contained in Paragraph 28 of the Complaint.
29. Frazier denies the allegations contained in Paragraph 29 of the Complaint.
30. Frazier avers that the statute speaks for itself.
31. Frazier denies the allegations contained in Paragraph 31 of the Complaint.
32. Frazier denies the allegations contained in Paragraph 32 of the Complaint.
33. Frazier denies the allegations contained in Paragraph 33 of the Complaint.

First Claim for Relief
(Petition Sections Were Not Prenumbered)

34. All allegations contained in Paragraph 34 are subject to the *Partial Motion to Dismiss*.

35. All allegations contained in Paragraph 35 are subject to the *Partial Motion to Dismiss*.
36. All allegations contained in Paragraph 36 are subject to the *Partial Motion to Dismiss*.
37. All allegations contained in Paragraph 37 are subject to the *Partial Motion to Dismiss*.
38. All allegations contained in Paragraph 38 are subject to the *Partial Motion to Dismiss*.
39. All allegations contained in Paragraph 39 are subject to the *Partial Motion to Dismiss*.
40. All allegations contained in Paragraph 40 are subject to the *Partial Motion to Dismiss*.

Second Claim for Relief

(Circulators Falsely Swore They Read And Understood Circulation Laws)

41. All allegations contained in Paragraph 41 are subject to the *Partial Motion to Dismiss*.
42. All allegations contained in Paragraph 42 are subject to the *Partial Motion to Dismiss*.
43. All allegations contained in Paragraph 43 are subject to the *Partial Motion to Dismiss*.
44. All allegations contained in Paragraph 44 are subject to the *Partial Motion to Dismiss*.
45. All allegations contained in Paragraph 45 are subject to the *Partial Motion to Dismiss*.
46. All allegations contained in Paragraph 46 are subject to the *Partial Motion to Dismiss*.
47. All allegations contained in Paragraph 47 are subject to the *Partial Motion to Dismiss*.
48. All allegations contained in Paragraph 48 are subject to the *Partial Motion to Dismiss*.
49. All allegations contained in Paragraph 49 are subject to the *Partial Motion to Dismiss*.
50. All allegations contained in Paragraph 50 are subject to the *Partial Motion to Dismiss*.
51. All allegations contained in Paragraph 51 are subject to the *Partial Motion to Dismiss*.
52. All allegations contained in Paragraph 52 are subject to the *Partial Motion to Dismiss*.

Third Claim for Relief

(Out Of State Circulators)

53. All allegations contained in Paragraph 53 are subject to the *Partial Motion to Dismiss*.
54. All allegations contained in Paragraph 54 are subject to the *Partial Motion to Dismiss*.
55. All allegations contained in Paragraph 55 are subject to the *Partial Motion to Dismiss*.
56. All allegations contained in Paragraph 56 are subject to the *Partial Motion to Dismiss*.
57. All allegations contained in Paragraph 57 are subject to the *Partial Motion to Dismiss*.
58. All allegations contained in Paragraph 58 are subject to the *Partial Motion to Dismiss*.

Fourth Claim for Relief
(False Circulator Addresses)

59. All allegations contained in Paragraph 59 are subject to the *Partial Motion to Dismiss*.
60. All allegations contained in Paragraph 60 are subject to the *Partial Motion to Dismiss*.
61. All allegations contained in Paragraph 61 are subject to the *Partial Motion to Dismiss*.
62. All allegations contained in Paragraph 62 are subject to the *Partial Motion to Dismiss*.
63. All allegations contained in Paragraph 63 are subject to the *Partial Motion to Dismiss*.
64. All allegations contained in Paragraph 64 are subject to the *Partial Motion to Dismiss*.

Fifth Claim for Relief
(Incorrect Circulator Affidavit Information)

65. All allegations contained in Paragraph 65 are subject to the *Partial Motion to Dismiss*.
66. All allegations contained in Paragraph 66 are subject to the *Partial Motion to Dismiss*.
67. All allegations contained in Paragraph 67 are subject to the *Partial Motion to Dismiss*.
68. All allegations contained in Paragraph 68 are subject to the *Partial Motion to Dismiss*.
69. All allegations contained in Paragraph 69 are subject to the *Partial Motion to Dismiss*.
70. All allegations contained in Paragraph 70 are subject to the *Partial Motion to Dismiss*.

Sixth Claim for Relief
(Altered Circulator Affidavits)

- 71. All allegations contained in Paragraph 71 are subject to the *Partial Motion to Dismiss*.
- 72. All allegations contained in Paragraph 72 are subject to the *Partial Motion to Dismiss*.
- 73. All allegations contained in Paragraph 73 are subject to the *Partial Motion to Dismiss*.
- 74. All allegations contained in Paragraph 74 are subject to the *Partial Motion to Dismiss*.
- 75. All allegations contained in Paragraph 75 are subject to the *Partial Motion to Dismiss*.
- 76. All allegations contained in Paragraph 76 are subject to the *Partial Motion to Dismiss*.

Seventh Claim for Relief
(False Notarization)

- 77. All allegations contained in Paragraph 77 are subject to the *Partial Motion to Dismiss*.
- 78. All allegations contained in Paragraph 78 are subject to the *Partial Motion to Dismiss*.
- 79. All allegations contained in Paragraph 79 are subject to the *Partial Motion to Dismiss*.
- 80. All allegations contained in Paragraph 80 are subject to the *Partial Motion to Dismiss*.
- 81. All allegations contained in Paragraph 81 are subject to the *Partial Motion to Dismiss*.

Eighth Claim for Relief
(Invalid/Incomplete Notarization)

- 82. All allegations contained in Paragraph 82 are subject to the *Partial Motion to Dismiss*.
- 83. All allegations contained in Paragraph 83 are subject to the *Partial Motion to Dismiss*.
- 84. All allegations contained in Paragraph 84 are subject to the *Partial Motion to Dismiss*.
- 85. All allegations contained in Paragraph 85 are subject to the *Partial Motion to Dismiss*.
- 86. All allegations contained in Paragraph 86 are subject to the *Partial Motion to Dismiss*.

Ninth Claim for Relief

(Petition Signed By Unregistered Voters)

87. All allegations contained in Paragraph 87 are subject to the *Partial Motion to Dismiss*.
88. All allegations contained in Paragraph 88 are subject to the *Partial Motion to Dismiss*.
89. All allegations contained in Paragraph 89 are subject to the *Partial Motion to Dismiss*.
90. All allegations contained in Paragraph 90 are subject to the *Partial Motion to Dismiss*.
91. All allegations contained in Paragraph 91 are subject to the *Partial Motion to Dismiss*.

Tenth Claim for Relief

(Petition Signed By Voters Not Registered At The Time Of Signature)

92. All allegations contained in Paragraph 92 are subject to the *Partial Motion to Dismiss*.
93. All allegations contained in Paragraph 93 are subject to the *Partial Motion to Dismiss*.
94. All allegations contained in Paragraph 94 are subject to the *Partial Motion to Dismiss*.
95. All allegations contained in Paragraph 95 are subject to the *Partial Motion to Dismiss*.
96. All allegations contained in Paragraph 96 are subject to the *Partial Motion to Dismiss*.

Eleventh Claim for Relief

(Incomplete Elector Information - Name/Signature)

97. All allegations contained in Paragraph 97 are subject to the *Partial Motion to Dismiss*.
98. All allegations contained in Paragraph 98 are subject to the *Partial Motion to Dismiss*.
99. All allegations contained in Paragraph 99 are subject to the *Partial Motion to Dismiss*.
100. All allegations contained in Paragraph 100 are subject to the *Partial Motion to Dismiss*.
101. All allegations contained in Paragraph 101 are subject to the *Partial Motion to Dismiss*.

Twelfth Claim for Relief

(Incomplete Elector Information - Address)

102. All allegations contained in Paragraph 102 are subject to the *Partial Motion to Dismiss*.

103. All allegations contained in Paragraph 103 are subject to the *Partial Motion to Dismiss*.
104. All allegations contained in Paragraph 104 are subject to the *Partial Motion to Dismiss*.
105. All allegations contained in Paragraph 105 are subject to the *Partial Motion to Dismiss*.
106. All allegations contained in Paragraph 106 are subject to the *Partial Motion to Dismiss*.

Thirteenth Claim for Relief
(Undated Elector Signatures)

107. All allegations contained in Paragraph 107 are subject to the *Partial Motion to Dismiss*.
108. All allegations contained in Paragraph 108 are subject to the *Partial Motion to Dismiss*.
109. All allegations contained in Paragraph 109 are subject to the *Partial Motion to Dismiss*.
110. All allegations contained in Paragraph 110 are subject to the *Partial Motion to Dismiss*.
111. All allegations contained in Paragraph 111 are subject to the *Partial Motion to Dismiss*.

Fourteenth Claim for Relief
(Duplicate Signature)

112. All allegations contained in Paragraph 112 are subject to the *Partial Motion to Dismiss*.
113. All allegations contained in Paragraph 113 are subject to the *Partial Motion to Dismiss*.
114. All allegations contained in Paragraph 114 are subject to the *Partial Motion to Dismiss*.
115. All allegations contained in Paragraph 115 are subject to the *Partial Motion to Dismiss*.
116. All allegations contained in Paragraph 116 are subject to the *Partial Motion to Dismiss*.

Fifteenth Claim for Relief
(Defective Random Sample Procedure)

117. All allegations contained in Paragraph 117 are subject to the *Partial Motion to Dismiss*.
118. All allegations contained in Paragraph 118 are subject to the *Partial Motion to Dismiss*.

119. All allegations contained in Paragraph 119 are subject to the *Partial Motion to Dismiss*.
120. All allegations contained in Paragraph 120 are subject to the *Partial Motion to Dismiss*.
121. All allegations contained in Paragraph 121 are subject to the *Partial Motion to Dismiss*.
122. All allegations contained in Paragraph 122 are subject to the *Partial Motion to Dismiss*.
123. All allegations contained in Paragraph 123 are subject to the *Partial Motion to Dismiss*.
124. All allegations contained in Paragraph 124 are subject to the *Partial Motion to Dismiss*.
125. All allegations contained in Paragraph 125 are subject to the *Partial Motion to Dismiss*.

Sixteenth Claim for Relief

(Random Sample Petition Sections Were Not Prenumbered)

126. All allegations contained in Paragraph 126 are subject to the *Partial Motion to Dismiss*.
127. All allegations contained in Paragraph 127 are subject to the *Partial Motion to Dismiss*.
128. All allegations contained in Paragraph 128 are subject to the *Partial Motion to Dismiss*.
129. All allegations contained in Paragraph 129 are subject to the *Partial Motion to Dismiss*.
130. All allegations contained in Paragraph 130 are subject to the *Partial Motion to Dismiss*.
131. All allegations contained in Paragraph 131 are subject to the *Partial Motion to Dismiss*.

Seventeenth Claim for Relief

(Circulators Of The Random Sample Sections Falsely Swore They Read And Understood
Circulation Laws)

132. Frazier incorporates all previous answers.
133. Frazier avers that the statute speaks for itself.
134. Frazier avers that the statute speaks for itself.
135. Frazier denies the allegations contained in Paragraph 135 of the Complaint.
136. Frazier avers that the statute speaks for itself.

137. Frazier is without sufficient knowledge to answer the allegations, and so, therefore, denies all allegations contained in Paragraph 137 of the Complaint.
138. Frazier avers that the statute speaks for itself.
139. Frazier is without sufficient knowledge to answer the allegations, and so, therefore, denies all allegations contained in Paragraph 139 of the Complaint.
140. Frazier avers that the statute speaks for itself.
141. Frazier denies the allegations contained in Paragraph 141 of the Complaint.
142. Frazier denies the allegations contained in Paragraph 142 of the Complaint.
143. Frazier denies the allegations contained in Paragraph 143 of the Complaint.

Eighteenth Claim for Relief

(Out Of State Circulators Obtained The Random Sample Signatures)

144. Frazier incorporates all previous answers.
145. Frazier avers that the statute speaks for itself.
146. Frazier avers that the statute speaks for itself.
147. Frazier denies the allegations contained in Paragraph 147 of the Complaint.
148. Frazier denies the allegations contained in Paragraph 148 of the Complaint.
149. Frazier denies the allegations contained in Paragraph 149 of the Complaint.

Nineteenth Claim for Relief

(False Circulator Addresses Within The Random Sample)

150. Frazier incorporates all previous answers.
151. Frazier avers that the statute speaks for itself.
152. Frazier avers that the statute speaks for itself.
153. Frazier denies the allegations contained in Paragraph 153 of the Complaint.

154. Frazier denies the allegations contained in Paragraph 154 of the Complaint.

155. Frazier denies the allegations contained in Paragraph 155 of the Complaint.

Twentieth Claim for Relief

(Incorrect Circulator Affidavit Information Related To The Random Sample)

156. Frazier incorporates all previous answers.

157. Frazier avers that the statute speaks for itself.

158. Frazier avers that the statute speaks for itself.

159. Frazier denies the allegations contained in Paragraph 159 of the Complaint.

160. Frazier denies the allegations contained in Paragraph 160 of the Complaint.

161. Frazier denies the allegations contained in Paragraph 161 of the Complaint.

Twenty-First Claim for Relief

(Altered Circulator Affidavits Within The Random Sample)

162. Frazier incorporates all previous answers.

163. Frazier avers that the statute speaks for itself.

164. Frazier avers that the statute speaks for itself.

165. Frazier denies the allegations contained in Paragraph 165 of the Complaint.

166. Frazier denies the allegations contained in Paragraph 166 of the Complaint.

167. Frazier denies the allegations contained in Paragraph 167 of the Complaint.

Twenty-Second Claim for Relief

(False Notarization Related To The Random Sample)

168. Frazier incorporates all previous answers.

169. Frazier avers that the statute speaks for itself.

- 170. Frazier denies the allegations contained in Paragraph 170 of the Complaint.
- 171. Frazier denies the allegations contained in Paragraph 171 of the Complaint.
- 172. Frazier denies the allegations contained in Paragraph 172 of the Complaint.

Twenty-Third Claim for Relief

(Invalid/Incomplete Notarization Related To The Random Sample)

- 173. Frazier incorporates all previous answers.
- 174. Frazier avers that the statute speaks for itself.
- 175. Frazier denies the allegations contained in Paragraph 175 of the Complaint.
- 176. Frazier denies the allegations contained in Paragraph 176 of the Complaint.
- 177. Frazier denies the allegations contained in Paragraph 177 of the Complaint.

Twenty-Fourth Claim for Relief

(Random Sample Signed By Unregistered Voters)

- 178. Frazier incorporates all previous answers.
- 179. Frazier avers that the statute speaks for itself.
- 180. Frazier denies the allegations contained in Paragraph 180 of the Complaint.
- 181. Frazier denies the allegations contained in Paragraph 181 of the Complaint.
- 182. Frazier denies the allegations contained in Paragraph 182 of the Complaint.

Twenty-Fifth Claim for Relief

(Random Sample Signed By Voters Not Registered At The Time Of Signature)

- 183. Frazier incorporates all previous answers.
- 184. Frazier avers that the statute speaks for itself.
- 185. Frazier denies the allegations contained in Paragraph 185 of the Complaint.
- 186. Frazier denies the allegations contained in Paragraph 186 of the Complaint.

187. Frazier denies the allegations contained in Paragraph 187 of the Complaint.

Twenty-Sixth Claim for Relief

(Incomplete Elector Information With The Random Sample - Name/Signature)

188. Frazier incorporates all previous answers.

189. Frazier avers that the statute speaks for itself.

190. Frazier denies the allegations contained in Paragraph 190 of the Complaint.

191. Frazier denies the allegations contained in Paragraph 191 of the Complaint.

192. Frazier denies the allegations contained in Paragraph 192 of the Complaint.

Twenty-Seventh Claim for Relief

(Incomplete Elector Information With The Random Sample - Address)

193. Frazier incorporates all previous answers.

194. Frazier avers that the statute speaks for itself.

195. Frazier denies the allegations contained in Paragraph 195 of the Complaint.

196. Frazier denies the allegations contained in Paragraph 196 of the Complaint.

197. Frazier denies the allegations contained in Paragraph 197 of the Complaint.

Twenty-Eighth Claim for Relief

(Undated Elector Signatures Within The Random Sample)

198. Frazier incorporates all previous answers.

199. Frazier avers that the statute speaks for itself.

200. Frazier denies the allegations contained in Paragraph 200 of the Complaint.

201. Frazier denies the allegations contained in Paragraph 201 of the Complaint.

202. Frazier denies the allegations contained in Paragraph 202 of the Complaint.

Twenty-Ninth Claim for Relief
(Duplicate Signature Within The Random Sample)

- 203. Frazier incorporates all previous answers.
- 204. Frazier avers that the statute speaks for itself.
- 205. Frazier denies the allegations contained in Paragraph 205 of the Complaint.
- 206. Frazier denies the allegations contained in Paragraph 206 of the Complaint.
- 207. Frazier denies the allegations contained in Paragraph 207 of the Complaint.

General Denial

- 208. Frazier denies each and every allegation, prayer for relief, averment and conclusion of law not specifically admitted herein.

AFFIRMATIVE DEFENSES

- 209. Only the signatures reviewed by the Office of the Secretary of State may be reviewed by this Court. The Court, therefore, lacks jurisdiction in regard to petition signatures not reviewed by the Secretary.
- 210. Plaintiffs have not exhausted all administrative remedies available under C.R.S. § 1-4-132, C.R.S. and, therefore, the Court lacks jurisdiction to review petition signatures not found within the random sample reviewed by the Secretary.
- 211. Frazier has substantially complied with all statutory requirements for submission of initiative signature petitions.
- 212. Plaintiffs claims are barred by the doctrine of equitable estoppel.
- 213. Plaintiffs claims are barred by the doctrine of due process.
- 214. Frazier incorporates by reference all other affirmative defenses plead by any other defendant.

CROSS-CLAIMS AGAINST THE SECRETARY OF STATE

First Cross-Claim for Relief

(Declaratory Judgment)

215. Under 8 C.C.R. § 1505-1, Rule 15.4, only one filing of a petition or addendum is allowed, and, after filing, may not be supplemented with additional signatures.
216. Under C.R.S. § 1-40-117(3)(b) and 8 C.C.R. § 1505-1, Rule 19, proponents of petitions deemed insufficient by the secretary of state may cure any insufficiency by submitting additional signatures within the permitted time under the Colorado constitution.
217. Under the Colorado constitution, art. V, § 1(2), all initiatives must be filed with the secretary of state at least three months before the general election at which the initiative is to be voted on.
218. The 2008 general election will be held on November 4, 2008. Consequently, under the Colorado constitution, all initiative signatures must be filed with the secretary of state prior to 3:00 p.m. on August 4, 2008.
219. Under C.R.S. § 1-40-119, a protest hearing must be concluded within thirty days of commencement. One of the purposes of the statute is to provide proponents with sufficient time to cure insufficient petitions with additional signatures.
220. Frazier may begin collecting additional signatures to add to the current valid petition signatures and cure any potential insufficiency.
221. Failure to allow Frazier to begin collecting curative signatures will unfairly prejudice Frazier and defeat the General Assembly's intention to provide a period to cure deficiencies with additional signatures.

PRAYER

WHEREFORE, Defendant Julian Jay Frazier prays that this Court enter a declaratory judgment stating that Frazier may begin collecting curative signatures to add to the petition in the event that the current petition is determined to be without sufficient valid signatures.

Respectfully submitted this 26th day of June, 2008.

[the signed original is on file at Hackstaff Gessler LLC, as required by Rule 121 § 1-26(9)]

By: Scott E. Gessler

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Attorneys for Defendants Ryan Frazier and
Julian Jay Cole

CERTIFICATE OF SERVICE

I certify that on this 26th day of June, 2008, the foregoing **DEFENDANTS FRAZIER AND COLE'S ANSWER** was served on all parties and other interested persons via e-filing to the following:

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Attorneys for Defendant Hon. Mike Coffman

*[the signed original is on file at Hackstaff
Gessler LLC, as required by Rule 121 § 1-26(9)]*

Scott Gessler