

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:22-cv-00247-SKC

GREG LOPEZ,
RODNEY PELTON, and
STEVEN HOUSE,

Plaintiffs,

v.

JENA GRISWOLD, Colorado Secretary of State, in her official capacity, and
JUDD CHOATE, Director of Elections, Colorado Department of State, in his official
capacity,

Defendants.

ANSWER

ANSWER TO INTRODUCTION

Much has changed since 2002, when Colorado adopted its current contribution- limits scheme. America has seen three new Presidents. Eminem, Ashanti, and Nelly no longer rule the pop charts. Gasoline no longer costs \$1.14 per gallon. Smartphones were invented and became ubiquitous. But Colorado has clung to already unconstitutionally low candidate-contribution limits.

Plaintiffs Greg Lopez and Rodney Pelton are candidates who need sufficient contributions to mount an effective campaign for office, and Plaintiff Steven House is a citizen who would like to associate with and support candidates of his choosing.

Colorado's contribution limits violate their First Amendment rights of speech and association by preventing them from effectively doing so. Equally

bad, Colorado punishes Mr. Lopez and Mr. Pelton when they refuse to limit their expenditures, and thus their speech, by doubling the contribution limits for their opponents. The government's interest in combatting actual or apparent corruption cannot justify such different contribution limits.

Both these regulations violate Plaintiffs' First Amendment rights, and they should be enjoined.

The allegations in the Introduction are legal contentions or recitations of law to which no responsive pleading is required. To the extent a responsive pleading is required, Defendants deny the allegations in the Introduction.

ANSWER TO JURISDICTION & VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 (2018) because Plaintiffs assert their claims under 42 U.S.C. § 1983 (2018), thus raising federal questions.

Defendants admit that the Court has federal question jurisdiction over this matter. Any remaining allegations in Paragraph 1 are legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

2. The Court also has jurisdiction under 28 U.S.C. § 1343(a) (2018) because this action seeks redress for the deprivation of constitutionally protected rights and appropriate relief for the protection of those rights.

Defendants admit that the Court has federal question jurisdiction over this matter. Any remaining allegations in Paragraph 2 are legal contentions to which no response is required. To the extent a response is

required, Defendants deny the allegations.

3. Venue is proper in this District pursuant to *id.* § 1391(b) because Defendants reside in the District and all events or omissions giving rise to Plaintiffs' claims occurred here.

Defendants admit that venue is proper in this District. Any remaining allegations in Paragraph 3 are legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

PARTIES

4. Plaintiff Greg Lopez is a candidate for Governor of Colorado in the 2022 election.

Defendants admit Plaintiff Greg Lopez has filed the necessary paperwork to be considered a candidate for Governor of Colorado in the 2022 election.

5. Plaintiff Rodney Pelton is a candidate for the Colorado Senate, in Senate District 35, in the 2022 election.

Defendants admit Plaintiff Rodney Pelton has filed the necessary paperwork to be considered a candidate for Colorado Senate in Senate District 35 in the 2022 election.

6. Plaintiff Steven House is a citizen and registered voter in Adams County, Colorado. He has a history of campaign contributions in the past and intends to contribute to campaigns for the 2022 election.

Defendants admit that an individual named "Steven House" is a citizen and registered voter in Adams County, Colorado. Defendants

admit that an individual named “Steven House” has made contributions to candidate committees organized under Colorado law. Defendants are without sufficient information to form a belief as to the truth of the remaining allegations in Paragraph 13, and therefore deny them.

7. Defendant Griswold is the Secretary of State for the State of Colorado. Her duties include administering Colorado’s campaign finance laws, including Colo. Const., art. XXVIII. Defendant Griswold receives, investigates, and administratively prosecutes campaign finance complaints.

Defendants admit that Secretary Griswold is the Secretary of State of Colorado. Defendants admit that Secretary Griswold’s duties, in her official capacity, include administering, in part, Colorado’s campaign finance laws. Defendants deny the remaining allegations in Paragraph 7.

8. Defendant Choate is the Director of Elections in the Colorado Department of State. In this capacity he manages the Department’s Division of Elections, including overseeing campaign finance complaints and enforcement. When the Secretary of State receives campaign finance complaints, Defendant Choate (or his designee) reviews those complaints for legal and factual sufficiency, and, if found sufficient, conducts further investigation. The Division may refer the complaint to a hearing officer for adjudication.

Defendants admit that Choate is the Director of Elections in the Colorado Department of State. Defendants admit that in this official capacity, Choate manages the Department of State’s Elections Division, which prosecutes campaign finance complaints. The remaining allegations in Paragraph 8 are legal contentions to which no response is

required. To the extent a response is required, Defendants deny the allegations.

ANSWER TO LEGAL BACKGROUND & OPERATIVE FACTS

Answer to The Regulatory Regime

9. In 2002, Colorado added Article XXVIII to its constitution.

Defendants admit that Article XXVIII was first added to the Colorado Constitution in 2002.

10. Among other things, Article XXVIII places limits on the amount a person may contribute to a single political candidate. *See* Colo. Const. art. XXVIII, § 3(1).

Defendants admit that Article XXVIII places limits on the amount a person may contribute to a single candidate for certain state offices.

11. For the purposes of its contribution limits, Article XXVIII divides candidates into two tiers. Tier 1 contains candidates for governor,¹ secretary of state, state treasurer, and attorney general. *Id.* § 3(1)(a). Tier 2 contains candidates for state senate, state house of representatives, state board of education, regent of the University of Colorado, and district attorney. *Id.* § 3(1)(b).

Defendants admit that, for the purposes of candidate contribution limits, Article XXVIII sets limits for two groups of candidates. Defendants also admit that the first group includes candidates for Governor (including lieutenant governor in the general election), secretary of state,

¹ In the general election, gubernatorial candidates run jointly with a lieutenant governor nominee. When appropriate, references to candidates for governor in this Complaint include such joint candidacies

state treasurer, or attorney general. Defendants also admit that the second group includes candidates for state senate, state house of representatives, state board of education, regent of the University of Colorado, or district attorney.

12. When first enacted, Article XXVIII limited per-person contributions to Tier 1 candidates to \$500 per election. *Id.* § 3(1)(a). Tier 2 candidates were limited to \$200 per election. *Id.* § 3(1)(b).

Defendants admit that, upon its enactment, Article XXVIII prohibited most persons from making contributions in excess of \$500 per election to so-called “Tier 1” candidates and \$200 to so-called “Tier 2” candidates.

13. Article XXVIII has rules for adjusting the limits upward with inflation. These rules have allowed the base Tier 1 limits to rise to \$625 per election at present. However, the Tier 2 limits remain at \$200 per election.

Defendants admit that Article XXVIII § 3, at subsection (13), includes an inflation adjustment that applies to the limits for so-called “Tier 1” and “Tier 2” candidate contributions. Defendants admit that for the 2022 election cycle, so-called “Tier 1” candidates are subject to a contribution limit of \$625 per election and so-called “Tier 2” candidates are subject to a contribution limit of \$200 per election.

14. The adjustment operates every four years (starting in the first quarter of 2007) and is “based upon the percentage change over a four year period in the United States bureau of labor statistics consumer price index for Denver-Boulder-Greeley, all items, all consumers, or its successor index.” Colo.

Const. art XXVIII, § 3(13). On information and belief, the successor index now used by the Department of State is the Denver-Aurora-Lakewood consumer price index, all items, all consumers.

Defendants admit the Department of State uses the bureau of labor statistics consumer price index, all items, all consumers, for Denver-Aurora-Lakewood to calculate the inflation adjustment under Article XXVIII, § 3(13). The remaining allegations in Paragraph 14 are legal contentions to which no response is required. To the extent a response is required, Defendants admit that the limits on contributions to candidates under Article XXVIII, § 3(1) “shall be adjusted by an amount based upon the percentage change over a four year period” in the bureau of labor statistics consumer price index for the relevant region.

15. However, that number is “rounded to the nearest lowest twenty-five dollars.” *Id.*

The allegations in Paragraph 15 are legal contentions to which no response is required. To the extent a response is required, Defendants admit that Article XXVIII, § 3(13)’s inflation adjuster rounds to the nearest lowest twenty-five dollars.

16. Because of this rounding-down requirement, Tier 1 races are not accurately indexed to inflation: the relevant consumer price index has increased approximately 56% since the second half of 2002 (when Article XVIII was added to the state constitution), but the Tier 1 contribution limit has only increased 25%.

The allegations in Paragraph 16 are legal contentions to which no

response is required. To the extent a response is required, Defendants admit that the relevant consumer price index has increased approximately 56% since the second half of 2002, when Article XXVIII was first added to the Colorado Constitution. Defendants also admit that the contribution limit in Article XXVIII, § 3(1)(a) has increased 25% since 2002 and will be readjusted again in early 2023.

17. Tier 2 races are not accurately indexed to inflation either: the relevant consumer price index has increased approximately 56% since the second half of 2002 (when Article XVIII was added to the state constitution), but the Tier 2 contribution limit has not changed at all.

The allegations in Paragraph 17 are legal contentions to which no response is required. To the extent a response is required, Defendants admit that the relevant consumer price index has increased approximately 56% since the second half of 2002, when Article XXVIII was first added to the Colorado Constitution. Defendants also admit that the contribution limit in Article XXVIII, § 3(1)(a) has not changed.

18. Colorado law allows candidates to accept and spend contributions for both the primary and general election at any time during an election cycle. Colo. Rev. Stat. § 1-45-103.7(3) (2021). This effectively doubles the base contribution limits to \$1250 for Tier 1 candidates and \$400 for Tier 2 candidates.

The allegations in Paragraph 18 are legal contentions to which no response is required. To the extent a response is required, Defendants admit that under Colorado law, a candidate committee established in the

name of a candidate may accept and spend contributions for both the primary and general election at any time during an election cycle.

19. Article XXVIII's contribution limits double again "for any candidate who has accepted the applicable voluntary spending limit," so long as the candidate's opponent "has not accepted the voluntary spending limit" and "has raised more than ten percent of the applicable voluntary spending limit." Colo. Const., art. XXVIII, § 4(5).

The allegations in Paragraph 19 are legal contentions to which no response is required. To the extent a response is required, Defendants admit that the contribution limits in Article XXVIII, § 3 double for any candidate who has accepted the applicable voluntary spending limits set forth in Article XXVIII, § 4, so long as at least one candidate in the race for the same office has not accepted the voluntary spending limit, and that non-accepting candidate has raised more than ten percent of the applicable voluntary spending limit.

Answer to Plaintiffs' Activities

20. As a candidate for governor in the 2022 election cycle, Plaintiff Greg Lopez is a candidate in a Tier 1 race.

Defendants admit that Plaintiff Greg Lopez has filed the necessary paperwork to run for Governor in the 2022 election cycle, and thus is a so-called "Tier 1" candidate subject to Article XXVIII, § 3(1)(a).

21. As of his January 18, 2021, report to the Department of State, Plaintiff Lopez's campaign had accepted maximum donations from five persons.

Defendants are without sufficient information to form a belief as to

the truth of the allegations in Paragraph 21, and therefore deny them. Defendants deny that Plaintiff Lopez's reports of contributions and expenditures filed with the Department of State, up to and including January 18, 2021, reflect maximum donations from five persons.

22. Based on his experience running for the same office in 2018, Plaintiff Lopez anticipates that he will receive and accept additional maximum donations as the campaign progresses.

Defendants are without sufficient information to form a belief as to the truth of the allegations in Paragraph 22, and therefore deny them.

23. Plaintiff Lopez has identified donors who would contribute to his campaign in amounts exceeding current contribution limits were it lawful to do so. He stands ready to accept such contributions, but refrains from doing so only because of the current contribution limits.

Defendants are without sufficient information to form a belief as to the truth of the allegations in Paragraph 23, and therefore deny them.

24. One of Plaintiff Lopez's primary opponents has agreed to limit her campaign expenditures in exchange for being able to accept higher campaign contributions. Because the incumbent governor has already raised more than 10% of the spending limit, Lopez's primary opponent is now able to accept contributions twice as large as would ordinarily be the case (i.e., up to \$2500 per person).

Defendants admit that one of Plaintiff Lopez's opponents in the 2022 gubernatorial primary election chose to accept voluntary spending limits for her campaign on September 10, 2021, although that primary opponent

withdrew that choice on January 31, 2022. Defendants also admit that the incumbent governor has raised more than 10% of the applicable voluntary spending limit. Defendants deny that Lopez’s primary opponent is currently able to accept contributions twice as large as would ordinarily be the case, but admit that Lopez’s primary opponent was able to accept contributions twice as large as would ordinarily be the case from September 10, 2021 through January 31, 2022.

25. As of her January 18, 2022, report to the Department of State, Plaintiff Lopez’s aforementioned opponent had accepted more than 100 contributions that were greater than what Lopez is allowed to accept.

Defendants admit the allegations in Paragraph 25.

26. Plaintiff Lopez has refused to agree to expenditure limits, choosing to exercise his right to political expression to its fullest. As a consequence, he has been punished with lower contribution limits.

Defendants admit that Plaintiff Lopez has not accepted voluntary expenditure limits. Defendants deny the remaining allegations in Paragraph 26.

27. As a candidate for the Colorado Senate, Plaintiff Rodney Pelton is a candidate in a Tier 2 race.

Defendants admit that Plaintiff Rodney Pelton has filed the necessary paperwork to run for Colorado Senate, Senate District 35 in the 2022 election cycle, and thus is a candidate in a so-called “Tier 2” race subject to Article XXVIII, § 3(1)(b).

28. As of his January 16, 2022, report to the Department of State,

Plaintiff Pelton's campaign had accepted a maximum donation from one person.

Defendants are without sufficient information to form a belief as to the truth of the allegations in Paragraph 28, and therefore deny them. Defendants admit that Plaintiff Pelton's reports of contributions and expenditures, filed with the Department of State, up to and including January 16, 2021, reflect maximum donations from one person.

29. Based on his experience running for the Colorado House in 2018 and 2020, Plaintiff Pelton anticipates that he will receive and accept additional maximum donations as the campaign progresses.

Defendants are without sufficient information to form a belief as to the truth of the allegations in Paragraph 29, and therefore deny them.

30. Plaintiff Pelton has identified donors who would contribute to his campaign in amounts exceeding current contribution limits were it lawful to do so. He stands ready to accept such contributions, but refrains from doing so only because of the current contribution limits.

Defendants are without sufficient information to form a belief as to the truth of the allegations in Paragraph 30, and therefore deny them.

31. Plaintiff Pelton has agreed to Article XXVIII's spending limits, but felt forced into it to keep opponents from getting an upper hand by being able to accept contributions twice as large as he could. Plaintiff Pelton's primary opponent has also accepted the spending limits—the result is that they both are subject to the \$400 limit.

Defendants admit that Plaintiff Pelton has accepted voluntary

expenditure limits under Article XXVIII, § 4. Defendants also admit that another candidate for Colorado Senate, District 35 has accepted voluntary spending limits. Defendants are without sufficient information to form a belief as to the truth of the remaining allegations in this paragraph and therefore deny them.

32. Plaintiff Steven House has a history of campaign contributions in the past and intends to contribute to campaigns for the 2022 election.

Defendants admit that an individual named “Steven House” has a history of making campaign contributions reflected in the Department of State’s TRACER system. Defendants are without sufficient information to form a belief as to the truth of the remaining allegations in Paragraph 32, and therefore deny them.

33. Plaintiff House has previously given maximum donations to both Tier 1 and Tier 2 candidates.

Defendants admit that an individual named “Steven House” has a history of making maximum donations to both so-called “Tier 1” and “Tier 2” candidates reflected in the Department of State’s TRACER system. Defendants are without sufficient information to form a belief as to the truth of the remaining allegations in Paragraph 33, and therefore deny them.

34. Plaintiff House has already contributed the primary-election maximum (\$625) to Plaintiff Lopez.

Defendants admit that an individual named “Steven House” contributed \$625 to Plaintiff Lopez’s candidate committee on March 19,

2021. Defendants are without sufficient information to form a belief as to the truth of the remaining allegations in Paragraph 34, and therefore deny them.

35. Plaintiff House expects and intends to give full, aggregate-maximum contributions to various Tier 1 and Tier 2 candidates as the 2022 election season progresses.

Defendants are without sufficient information to form a belief as to the truth of the allegations in Paragraph 35, and therefore deny them.

36. If it were lawful, Plaintiff House would contribute to Tier 1 and Tier 2 candidates in excess of the current contribution limits. Moreover, Plaintiff House would support his preferred candidates without regard to how much they agree to spend; he contributes money with the hope and expectation that it can be fully spent to communicate his candidates' messages.

Defendants are without sufficient information to form a belief as to the truth of the allegations in Paragraph 36, and therefore deny them.

37. Plaintiffs intend to engage in materially and substantially similar activity in future elections. Absent relief, they will similarly be limited by Colorado's contribution limits.

Defendants are without sufficient information to form a belief as to the truth of the allegations in Paragraph 37, and therefore deny them.

**ANSWER TO COUNT ONE:
UNCONSTITUTIONALLY LOW
CONTRIBUTION LIMITS
U.S. CONST. AMENDS. I, XIV; 42 U.S.C. § 1983**

38. Plaintiffs reallege and incorporate by reference paragraphs 1 through

37.

Defendants reallege and incorporate by reference their answers to paragraphs 1 through 37.

39. The First Amendment protects both political association and political expression. The Amendment “has its fullest and most urgent application precisely to the conduct of campaigns for political office.” *McCutcheon v. FEC*, 572 U.S. 185, 191–92 (2014) (plurality opinion). Furthermore, “the right of association is a basic constitutional freedom that is closely allied to freedom of speech and a right which, like free speech, lies at the foundation of a free society.” *FEC v. Nat’l Right to Work Comm.*, 459 U.S. 197, 206–07 (1982) (internal quotes omitted).

The allegations in Paragraph 39 are legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 39.

40. Laws that limit the amount of money a person may give to a candidate intrude upon both of those First Amendment interests and infringe on the rights of contributors, candidates, and advocacy groups.

The allegations in Paragraph 40 are legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 40.

41. The U.S. Supreme Court has previously held that government-imposed limits on political contributions must be closely drawn to match a sufficiently important interest.

The allegations in Paragraph 41 are legal contentions to which no response is required. To the extent a response is required, Defendants

deny the allegations in Paragraph 41.

42. Under current caselaw, the only governmental interest that can justify limiting political contributions is an interest in preventing quid pro quo corruption or the appearance thereof.

The allegations in Paragraph 42 are legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 42.

43. Colorado’s limits are too restrictive from a constitutional perspective: they work more harm to protected First Amendment interests than any anticorruption objective can justify.

The allegations in Paragraph 43 are legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 43.

44. In enacting Article XXVIII, lawmakers mentioned corruption only in passing. They relied primarily on interests in leveling influence over elections and the total amount spent in elections—interests the Supreme Court has specifically forbidden.

Defendants admit that the first sentence of the first section of Article XXVIII declares that “[t]he people of the state of Colorado hereby find and declare that large campaign contributions to political candidates create the potential for corruption and the appearance of corruption.”

Defendants deny that the first sentence of this constitutional provision is made “in passing.” Defendants are without sufficient information to form a belief as to the truth of the remaining allegations in Paragraph 44, and

therefore deny them.

45. Even if Colorado had raised an accepted, sufficiently important interest, its contribution-limit scheme is not closely drawn.

The allegations in Paragraph 45 are legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 45.

46. Indeed, Colorado's contribution limits raise all the danger signs triggering special constitutional scrutiny of the scheme's tailoring.

The allegations in Paragraph 46 are legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 46.

47. Colorado's limits are lower than any the Supreme Court has previously upheld.

The allegations in Paragraph 47 are legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 47.

48. Colorado's limits are also lower than comparable limits in other states. They are lower than almost all other states for Tier 1 or comparable candidates, and no state in the country has lower contribution limits for Tier 2 or comparable candidates than Colorado does.

The allegations in Paragraph 48 are legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 48.

49. And because the inflation adjuster at Article XXVIII is ineffective,

those limits will continue to get smaller and smaller—both in absolute terms and in comparison to those of other states.

The allegations in Paragraph 49 are legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 49.

50. Finally, Colorado does not have any special history of quid pro quo corruption that would give any special justification for especially low limits.

The allegations in Paragraph 50 are legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 50.

51. Colorado's scheme cannot survive the considerations imposed when those danger signs trigger scrutiny. Colorado's contribution limits are so low that they impede the ability of candidates to amass the resources necessary for effective advocacy.

The allegations in Paragraph 51 are legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 51.

52. Challengers such as Plaintiff Lopez already face higher costs to overcome the name-recognition and other advantages of incumbency.

Defendants are without sufficient information to form a belief as to the truth of the allegations in Paragraph 52, and therefore deny them.

53. Also, the cost of elections is increasing faster than the rate of inflation and much faster than the contribution limits.

Defendants are without sufficient information to form a belief as to the truth of the allegations in Paragraph 52, and therefore deny them.

54. Colorado's treatment of volunteer services aggravates these problems because volunteers' expenses in supporting a campaign count against the volunteer's contribution limit.

Defendants deny the allegations in Paragraph 54, as formulated.

55. By enforcing Colo. Const. art. XXVIII, §§ 3 and 4, Defendants, under color of law, deprive Plaintiffs of their freedom of speech and association under the First and Fourteenth Amendments to the United States Constitution. Plaintiffs are thus damaged in violation of § 1983, and are therefore entitled to declaratory and injunctive relief against continued enforcement and maintenance of Defendants' unconstitutional customs, policies, and practices; and attorney fees and expenses pursuant to 42 U.S.C. § 1988 (2018).

The allegations in Paragraph 55 are legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 55.

**ANSWER TO COUNT TWO:
DIFFERENTIAL CONTRIBUTION
LIMITS
U.S. CONST. AMENDS. I, XIV; 42 U.S.C. § 1983**

56. Plaintiffs reallege and incorporate by reference paragraphs 1 through 37.

Defendants reallege and incorporate by reference their answers to paragraphs 1 through 55.

57. By doubling an opponent's contribution limits when a candidate

refuses to abide by expenditure limits, Colorado unconstitutionally punishes candidates that choose to exercise their First Amendment rights fully, and the donors who would support them.

The allegations in Paragraph 57 are legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 57.

58. There is no justification for this differential other than a mere desire to limit money spent on politics—i.e., to limit the exercise of First Amendment rights.

The allegations in Paragraph 58 are legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 58.

59. The Supreme Court has “never upheld the constitutionality of a law that imposes different contribution limits for candidates competing against each other.” *Davis v. FEC*, 554 U.S. 724, 738 (2008).

The allegations in Paragraph 59 are legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 59.

60. The differential contribution limits require candidates to choose between the First Amendment right to engage in unfettered political speech and subjection to discriminatory fundraising limitations.

The allegations in Paragraph 60 are legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 60.

61. Furthermore, the differential contribution limits treat similarly situated candidates differently without any compelling interest.

The allegations in Paragraph 61 are legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 61.

62. Consequently, by enforcing Colo. Const. art. XXVIII, § 4, Defendants, under color of law, deprive Plaintiffs of the First Amendment's protection for free speech and association. Plaintiffs are thus damaged in violation of § 1983, and are therefore entitled to declaratory and injunctive relief against continued enforcement and maintenance of Defendants' unconstitutional customs, policies, and practices; and attorney fees and expenses pursuant to § 1988.

The allegations in Paragraph 62 are legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 62.

Defendants' Defenses

Defendants assert the following defenses, for which Defendants do not concede that they bear the burden of persuasion or proof.

- A. ***Plaintiffs' claims are barred by the equitable doctrine of laches.***
- B. ***Plaintiffs' claims are barred by the equitable doctrine of waiver.***
- C. ***Plaintiffs' claims are barred by the equitable doctrine of estoppel.***

D. Plaintiffs are not entitled to injunctive relief because they cannot satisfy the necessary elements for entry of an injunction.

E. The provisions of Colorado law addressed in the complaint are not unconstitutional.

F. Defendants reserve the right to raise additional affirmative defenses as appropriate.

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CERTIFICATE OF SERVICE

I certify that I served the foregoing **ANSWER** upon all parties herein by e-filing with the CM/ECF system maintained by the Court on March 30, 2022, addressed as follows:

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