

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-00859-WJM-KLM

AMERICAN TRADITION INSTITUTE,
AMERICAN TRADITION PARTNERSHIP, and
ROD LUECK,

Plaintiffs,

v.

JOSHUA EPEL, in his official capacity as Chairman of the Colorado Public
Utilities Commission;
JAMES TARPEY, in his official capacity as a Commissioner of the Colorado
Public Utilities Commission;
PAMELA PATTON, in her official capacity as a Commissioner of the Colorado
Public Utilities Commission;

Defendants,

ENVIRONMENT COLORADO,
CONSERVATION COLORADO EDUCATION FUND,
SIERRA CLUB,
THE WILDERNESS SOCIETY,
SOLAR ENERGY INDUSTRIES ASSOCIATION, and
INTERWEST ENERGY ALLIANCE,

Defendant Intervenors.

**ANSWER OF DEFENDANTS EPEL, TARPEY, AND PATTON TO
PLAINTIFFS' SECOND AMENDED COMPLAINT**

Defendants Joshua Epel, James Tarpey, and Pamela Patton

(“Defendants”), by and through the Office of the Colorado Attorney General,
submit the following Answer to Plaintiffs’ Second Amended Complaint.

INTRODUCTION

Plaintiffs have set forth the historical basis for their decision to amend their complaint. There are no allegations in this section of Plaintiffs' complaint requiring a response from Defendants.

NATURE OF THE ACTION

1. Paragraph 1 contains Plaintiffs' characterization of the case.

Plaintiffs' complaint speaks for itself.

2. Defendants deny the allegations of paragraph 2.

PARTIES

3. Defendants deny that the Colorado RES has caused Plaintiff higher energy costs, less reliable energy service, greater pollution emissions and higher emissions of greenhouse gases. Defendants are without sufficient information to form a belief regarding the truth of the remaining allegations of paragraph 3 and therefore deny these allegations.

4. Defendants deny that the Colorado RES has caused Plaintiff higher energy costs, less reliable energy service, greater pollution emissions and higher emissions of greenhouse gases. Defendants are without sufficient information to form a belief regarding the truth of the remaining allegations of paragraph 4 and therefore deny these allegations.

5. Defendants admit that the RES began as a voter-approved initiative and after becoming law was amended by the legislature. Defendants deny the remaining allegations of paragraph 5.

6. Defendants admit that Joshua Epel is Chairman of the PUC and that the PUC implements the RES. With respect to the capacity in which Mr. Epel is sued, the complaint speaks for itself. Defendants deny the remaining allegations of paragraph 6.

7. Defendants admit that James Tarpey is a PUC commissioner and that the PUC implements the RES. With respect to the capacity in which Mr. Tarpey is sued, the complaint speaks for itself. Defendants deny the remaining allegations of paragraph 7.

8. Defendants admit that Pamela Patton is a PUC commissioner and that the PUC implements the RES. With respect to the capacity in which Ms. Patton is sued, the complaint speaks for itself. Defendants deny the remaining allegations of paragraph 8.

JURISDICTION AND VENUE

9. Defendants deny that Plaintiffs have standing to maintain this action. With respect to the nature of Plaintiffs' claims, the complaint speaks for itself. Defendants deny the remaining allegations of paragraph 9.

10. Defendants admit that venue is proper.

11. The statutes and rules cited in paragraph 11 speak for themselves. Defendants deny that Plaintiffs are entitled to declaratory relief.

12. The statutes and rules cited in paragraph 12 speak for themselves. Defendants deny that Plaintiffs are entitled to injunctive relief.

THE COMMERCE CLAUSE

13. The Tenth Circuit Court of Appeals case of *KT&G Corp. v. Attorney General of the State of Oklahoma*, 535 F.3d 1114 (10th Cir. 2008) speaks for itself. Defendants deny the allegations in paragraph 13 to the extent that Plaintiffs incorrectly or inaccurately cite that case.

14. Defendants deny the allegations of paragraph 14.

15. Defendants are without sufficient information to form a belief as to the truth or falsity of the allegations of paragraph 15, and therefore deny the same.

16. The pleadings and transcripts associated with PUC Docket No. 09I-041E speak for themselves. Defendants deny paragraph 16 to the extent that Plaintiffs incorrectly or inaccurately cite or reference those documents. Defendants deny the implication that a reference to the Commerce Clause in a transcript or pleading is tantamount to the Commerce Clause being “well-known” among energy regulators.

17. The document quoted in paragraph 17 speaks for itself. The Defendants deny the allegations in paragraph 17 to the extent that Plaintiffs incorrectly or inaccurately cite that document.

18. The document quoted in paragraph 18 speaks for itself. The Defendants deny the allegations in paragraph 18 to the extent that Plaintiffs incorrectly or inaccurately cite that document.

FACTS ON INTERSTATE COMMERCE OF ELECTRICITY

19. Defendants are without sufficient information to form a belief as to what Plaintiffs rely on in support of their complaint, and are unable to verify the truth or falsity of the cited document, and deny the allegations in paragraph 19.

20. Defendants admit electricity can be described as functioning as an ebb and flow. However, Defendants note analogies to water pipelines are not uncommon and have been utilized by experts in the field. To the extent Plaintiffs seek to discount the value of all such analogies, Defendants deny the allegations in paragraph 20. Defendants deny the balance of the allegations in paragraph 20.

21. The allegations in Plaintiff's complaint speak for themselves. Defendants deny the allegations, if any, contained in paragraph 21.

22. Defendants admit the allegations of paragraph 22.

23. Defendants admit that most of the renewable energy used to satisfy Colorado's Renewable Energy Standard is generated by wind. Defendants deny the remaining allegations in paragraph 23.

24. Defendants admit the allegations of paragraph 24

25. Defendants admit the allegations of paragraph 25.

26. Defendants admit that air temperature is one of many factors that may affect an electricity generating unit's performance. Defendants deny the remaining allegations in paragraph 26.

27. Defendants admit the allegations of paragraph 27.

28. Defendants deny the allegations in paragraph 28.

29. Defendants deny the statement or implication that renewable sources of energy are not reliable, and admit the balance of paragraph 29.

30. Defendants admit that the concept of “availability” is often used in the context of dispatchable or fossil fuel resources. Defendants deny the remaining allegations in paragraph 30.

31. Defendants admit the allegations of paragraph 31.

32. Defendants admit the allegations of paragraph 32.

33. Defendants admit that an individual wind turbine typically has a low capacity factor. Defendants further admit that some wind turbines operate within the examples set forth in the second sentence of paragraph 33 while others do not. Defendants deny the allegations set forth in the third sentence of paragraph 33. The fourth sentence of paragraph 33 appears to contain mathematical calculations for the purpose of demonstration and, as such, require neither admission nor denial. Defendants deny the balance of the allegations in paragraph 33.

34. Defendants deny the allegations in paragraph 34.

35. Defendants admit the allegations in the first sentence of paragraph 35 and deny the allegations in the second sentence of paragraph 35.

36. The allegations in paragraph 36 and the facts to which Plaintiffs apply them are so general as to defy a determination of their truth or falsity, and the same are denied. Defendants deny the allegations in the last sentence of paragraph 36.

37. Defendants admit the allegations in the first sentence of paragraph 37 and deny the balance of paragraph 37.

38. Defendants admit the allegations in the first sentence of paragraph 38 and deny the remaining allegations in paragraph 38.

39. Defendants deny the allegations in paragraph 39.

40. Defendants deny the allegations in paragraph 40.

41. Defendants deny the allegations in paragraph 41.

42. Defendants deny the allegations in paragraph 42.

43. Defendants admit the allegations in paragraph 43.

44. Defendants admit the allegations in paragraph 44.

45. Defendants deny the allegations in paragraph 45.

46. Defendants admit that the physical electricity generated by renewable sources and supplied to the grid is indistinguishable from electricity generated by non-renewable sources and supplied to the grid. Defendants deny the remaining allegations in paragraph 46.

47. Defendants deny the allegations in paragraph 47, as, among other reasons, there are power plants and transmission lines that exclusively serve one community or group of people.

48. With respect to the allegations of paragraph 48, Defendants admit that the cost of electricity transmission is one of many factors that regulators

will take into account when setting electricity rates through the ratemaking process.

49. Paragraph 49 contains a legal conclusion, requiring neither admission nor denial.

50. Defendants admit the first sentence of paragraph 50. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in the second sentence of paragraph 50 and therefore deny the same. Defendants admit the third sentence of paragraph 50.

51. Defendants admit the allegations in paragraph 51.

52. Defendants admit that the PSCo transmission network is located primarily along the Front Range and the north-eastern plains of Colorado with extensions west to Grand Junction, Colorado, and south-west to Alamosa, Colorado, and east to Limon, Colorado and the DC intertie. Defendants admit the remaining allegations in paragraph 52, but note that transmission also occurs at a voltage of 345 kV.

53. Defendants admit the allegations in paragraph 53.

54. Defendants deny the allegations in paragraph 54.

55. Defendants admit the allegations in paragraph 55.

56. Defendants deny the allegations in paragraph 56.

57. Defendants admit the allegations in paragraph 57.

58. Defendants deny the allegations in paragraph 58.

59. Defendants deny the allegations in paragraph 59.

60. Defendants admit the allegations in the first sentence of paragraph 60. The legislative declaration of intent quoted in the second sentence of paragraph 60 speaks for itself. Defendants deny the allegations in paragraph 60 to the extent that Plaintiffs incorrectly or inaccurately cite the legislative declaration of intent. Defendants deny the remaining allegations in paragraph 60.

61. Paragraph 61 contains legal conclusions or Plaintiffs' opinions, or both, and the same is denied.

62. Paragraph 62 contains legal conclusions or Plaintiffs' opinions, or both, and the same is denied.

63. Paragraph 63 contains legal conclusions or Plaintiffs' opinions, or both, and the same is denied.

64. Paragraph 64 contains legal conclusions or Plaintiffs' opinions, or both, and the same is denied.

65. The statutory language of § 40-2-124, C.R.S., speaks for itself. Defendants deny the allegations in paragraph 65 to the extent that Plaintiffs

incorrectly or inaccurately cite or characterize that statutory language.

Defendants deny the remaining allegations of paragraph 65.

66. The statutory language of § 40-2-124, C.R.S., speaks for itself.

Defendants deny the allegations in paragraph 66 to the extent that Plaintiffs incorrectly or inaccurately cite or characterize that statutory language.

Defendants deny the remaining allegations of paragraph 66.

67. The cited statutes speak for themselves. Defendants deny the allegations of paragraph 67 to the extent that Plaintiffs incorrectly or inaccurately cite or characterize that statutory language. Defendants deny the remaining allegations of paragraph 67.

68. Paragraphs 68 - 71 are prefaced with the unqualified statement that “electricity generation must be reliable” which is, at best, subjective and a statement of Plaintiffs’ opinion. Defendants deny paragraphs 68 - 71 in their entirety based on the implication that energy derived from non-renewable sources is reliable and energy from renewable energy sources is not reliable. Supply and demand on an interstate grid do not always match up, despite Plaintiffs’ claim that they “must” do so, and when they do not, adverse consequences could, but do not necessarily, result. Plaintiffs’ characterization of facts in paragraph 68 is not accurate and Defendants deny the same.

69. Paragraphs 68 - 71 are prefaced with the unqualified statement that “electricity generation must be reliable” which is, at best, subjective and a statement of Plaintiffs’ opinion. Defendants deny paragraphs 68 - 71 in their entirety based on the implication that energy derived from non-renewable sources is reliable and energy from renewable energy sources is not reliable. Every allegation in paragraph 69 contains mixed facts and opinion which could be true under some circumstances but not others. Accordingly, the allegations in paragraph 69 as written are not accurate, are potentially misleading, and the same are denied.

70. Paragraphs 68 - 71 are prefaced with the unqualified statement that “electricity generation must be reliable” which is, at best, subjective and a statement of Plaintiffs’ opinion. Defendants deny paragraphs 68 - 71 in their entirety based on the implication that energy derived from non-renewable sources is reliable and energy from renewable energy sources is not reliable. The publication cited by Plaintiffs would speak for itself if it exists. However, because Defendants are without sufficient information or knowledge to evaluate the truth or falsity of the hearsay allegations attributable to the third party publication cited in paragraph 70, Defendants deny the same.

71. Paragraphs 68 - 71 are prefaced with the unqualified statement that “electricity generation must be reliable” which is, at best, subjective and a statement of Plaintiffs’ opinion. Defendants deny paragraphs 68 - 71 in their

entirety based on the implication that energy derived from non-renewable sources is reliable and energy from renewable energy sources is not reliable.

Paragraph 71 is poorly written, difficult to decipher, and Defendants are without sufficient information or knowledge to admit or deny such allegations.

Accordingly, Defendants deny the allegations in paragraph 71.

72. The allegations contained in paragraph 72 are illogical and do not sustain the conclusion drawn there. Defendants affirmatively state that most of the energy generated from renewable sources in Colorado is generated by wind. Defendants deny the remaining allegations in paragraph 72.

73. Defendants deny the allegations in the first four sentences of paragraph 73. The publications cited by Plaintiffs speaks for themselves, but Defendants are without sufficient information or knowledge to evaluate the underlying facts or methodology used to reach the conclusions drawn from that publication by Plaintiffs, and Defendants therefore deny the remaining allegations in paragraph 73.

74. Defendants deny the allegations in the first sentence of paragraph 74. Defendants are without sufficient information or knowledge necessary to evaluate the truth or falsity of the remaining allegations in paragraph 74 and deny the same.

75. Defendants deny the allegations in paragraph 75.

76. Defendants deny the allegations in paragraph 76.

77. Defendants deny the allegations in paragraph 77.

78. The first two sentences of Paragraph 78 describe something that could possibly happen, and these allegations are admitted only to the extent that they are a possibility under some set of circumstances. Defendants deny the allegations in the third and fourth sentences of paragraph 78.

79. Defendants deny the allegations of paragraph 79.

80. Defendants are without information or knowledge sufficient to form a belief as to what constitutes “most” utilities, nor the reasons any of Plaintiffs’ hypothetical utilities would or would not utilize wind generated energy, and Defendants therefore deny the allegations in paragraph 80.

81. Defendants generally admit that PSCo has a relatively routine schedule of cycling that it adheres to on any given night. However, Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the hypothetical “night” and “wind” described in paragraph 81, and deny the allegations in paragraph 81.

82. Defendants deny the allegations in paragraph 82.

83. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations in paragraph 83 and deny the same.

84. Defendants deny the allegations in paragraph 84.

85. Defendants deny the allegations in the first sentence of paragraph 85. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 85 and deny the same.

86. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations in paragraph 86 and deny the same.

87. Defendants deny the allegations in paragraph 87.

88. Any studies or rankings prepared by the Energy Information Administration speak for themselves and Defendants deny any allegation in paragraph 88 that is inconsistent with or incorrectly cites such studies or rankings. Defendants deny the balance of the allegations in paragraph 88.

89. Defendants deny the allegations in paragraph 89. Defendants specifically state that other costs, such as the rising costs of natural gas and coal, as well as the costs to build the new Comanche III coal plant in Colorado, are among the factors that contribute to higher retail prices for electricity in Colorado.

90. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations in paragraph 90 and deny the same.

91. Defendants deny the allegations in paragraph 91.

92. Defendants deny the allegations in paragraph 92.

93. Defendants deny the allegations in paragraph 93.

94. The allegations of paragraph 94 are incomprehensible, and Defendants therefore deny these allegations.

95. Defendants deny the allegations in the first sentence of paragraph 95. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations in the second and third sentences of paragraph 95 and deny the same. Defendants deny the allegations in the fourth sentence of paragraph 95.

96. Defendants deny the allegations in paragraph 96.

97. Defendants deny the allegations in the first sentence of paragraph 97. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations in the second and third sentences of paragraph 97 and deny the same.

98. Defendants admit that the Clean Air Act regulates pollutants released into the air, and affirmatively states that the Act speaks for itself. Defendants deny any allegation or insinuation in paragraph 98 that is inconsistent with the statutory language of the Act, and Defendants deny the balance of the allegations in paragraph 98.

99. Defendants deny the allegations in paragraph 99.

100. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations in paragraph 100, including whether the analyses were done in Colorado or some other state, and deny the same.

101. Defendants deny the allegations in paragraph 101.

102. Defendants deny the allegations in the first, second, third, fourth, fifth, and eighth sentences of paragraph 102. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the remaining allegations and therefore deny the same.

103. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of what Plaintiffs believe is important, and deny the allegations in paragraph 103.

104. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations in paragraph 104, and deny the same.

105. The allegations in paragraph 105 appear directed at persons or entities other than Defendants in this lawsuit, and are denied on that basis. The document referenced in paragraph 105, if identified, would speak for itself. Defendants deny the allegations in paragraph 105 to the extent that Plaintiffs incorrectly or inaccurately cite or characterize the referenced document. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations in paragraph 105, and deny the same.

106. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations in paragraph 106 and deny the same.

107. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations in paragraph 107 and deny the same.

108. Defendants deny the allegations in paragraph 108.

109. Defendants deny the allegations in paragraph 109.

110. Defendants deny the allegations in paragraph 110.

111. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations in paragraph 111 and deny the same.

112. Defendants deny the allegations in paragraph 112.

113. Defendants deny the allegations in paragraph 113.

114. Defendants deny the allegations in paragraph 114.

115. Defendants deny the allegations in paragraph 115.

116. Defendants deny the allegations in paragraph 116.

117. Defendants deny the allegations in paragraph 117.

118. Defendants deny the allegations in the first and second sentences of paragraph 118. Defendants admit the allegations in the third sentence of paragraph 118. The fourth sentence of paragraph 118 contains a demonstrative or example calculation done by Plaintiffs and requires neither admission nor denial. Defendants deny the balance of the allegations in paragraph 118.

119. The language utilized by Public Service Company of Colorado on its billing statements speaks for itself. Defendants deny the allegations in paragraph 119 to the extent that Plaintiffs incorrectly or inaccurately cite or characterize the referenced language. Defendants deny the remaining allegations in paragraph 119.

120. Defendants deny the allegations in paragraph 120.

121. With respect to the first two sentences of paragraph 121, the Statement of Position filed by Public Service Company of Colorado in PUC

Docket No. 09A-772E speaks for itself. Defendants deny the allegations in paragraph 121 to the extent that Plaintiffs incorrectly or inaccurately cite or characterize the referenced language. The third sentence of paragraph 121 contains a legal conclusion requiring neither admission nor denial.

122. Defendants deny the allegations in paragraph 122.

123. Defendants deny the allegations in paragraph 123.

124. Defendants deny the allegations in paragraph 124.

125. Defendants deny the allegations in the first and second sentences of paragraph 125. Any testimony by trial staff of the PUC speaks for itself.

Defendants deny the allegations in the third sentence of paragraph 125 to the extent that Plaintiffs incorrectly or inaccurately cite or characterize the testimony of PUC staff. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations in the fourth sentence of paragraph 125 and deny the same.

126. Defendants deny the allegations in paragraph 126.

127. The decisions of the PUC speak for themselves. Defendants deny the allegations in paragraph 127 to the extent that Plaintiffs incorrectly or inaccurately cite or characterize the decisions of the PUC, and Defendants deny the remaining allegations in paragraph 127.

128. Defendants deny the allegations in paragraph 128.

129. Defendants deny the allegations in paragraph 129, as they refer to allegations about specific costs and information in previous paragraphs of the

complaint which Defendants have denied. Defendants deny the balance of the allegations in paragraph 129.

130. Defendants deny the allegations in paragraph 130.

131. Defendants deny the allegations in paragraph 131.

132. Defendants deny the allegations in paragraph 132.

133. Defendants deny the allegations in the first sentence of paragraph 133. Defendants are without information or knowledge sufficient to form a belief as to the truth or falsity of the allegations in the second sentence of paragraph 133 and deny the same.

134. The statutory language of § 40-2-124, C.R.S., speaks for itself, and Defendants deny the allegations in paragraph 134 to the extent that Plaintiffs incorrectly or inaccurately cite or characterize that statutory language. Defendants have insufficient information to admit or deny the allegations in the first sentence of paragraph 134 and therefore deny these allegations. Defendants deny the remaining allegations in paragraph 134.

135. Defendants deny the allegations in paragraph 135.

136. Defendants deny the allegations of paragraph 136.

First Claim for Relief

137. Defendants incorporate their responses to paragraphs 1-136.

138. The provisions of Colorado statutes speak for themselves. Defendants deny the remaining allegations of paragraph 138.

139. Defendants deny that Plaintiffs are entitled to the relief sought in paragraph 139. Defendants deny the allegations of paragraph 139.

Second Claim for Relief

140. Defendants incorporate their responses to paragraphs 1-139.

141. Defendants deny that Plaintiff are entitled to the relief sought in paragraph 141 and deny the allegations in paragraph 141.

Third Claim for Relief

142. Defendants incorporate their responses to paragraphs 1-141.

143. The provisions of the statutes cited in paragraph 143 speak for themselves. Defendants deny the remaining allegations of paragraph 143.

144. Defendants deny that Plaintiffs are entitled to the relief sought in paragraph 144, and Defendants deny the allegations contained in paragraph 144.

Fourth Claim for Relief

145. Defendants incorporate their responses to paragraphs 1-144.

146. Defendants deny that Plaintiffs are entitled to the relief sought in paragraph 146, and Defendants deny any allegations contained in paragraph 146.

Fifth Claim for Relief

147. Defendants incorporate their responses to paragraphs 1-146.

148. The Colorado statute cited in paragraph 148 speaks for itself. Defendants deny the allegations of paragraph 148.

149. Defendants deny that Plaintiffs are entitled to the relief sought in paragraph 149, and Defendants deny any allegations contained in paragraph 149.

Sixth Claim for Relief

150. Defendants incorporate their responses to paragraphs 1-149.

151. Defendants deny that Plaintiffs are entitled to the relief sought in paragraph 151, and Defendants deny any allegations contained in paragraph 151.

Seventh Claim for Relief

152. Defendants incorporate their responses to paragraphs 1-151.

153. Defendants deny that Plaintiffs are entitled to the relief sought in paragraph 153.

Affirmative Defenses

Defendants, through their counsel, state as follows:

1. The Amended Complaint fails to state a claim upon which relief may be granted.
2. Plaintiffs lack standing to bring some or all of the claims in the Amended Complaint.
3. Some or all of Plaintiffs' claims are or may be barred by the Eleventh Amendment.

4. Some or all of Plaintiffs' claims are or may be barred by qualified immunity.

5. Some or all of Plaintiffs' claims are or may be barred by official immunity.

6. Some or all of Plaintiffs' claims are or may be barred by legislative immunity.

7. Plaintiffs' claims are or may be barred by laches, applicable statute of limitations, acquiescence, waiver, estoppel, ratification, or the tender back doctrine.

8. Plaintiffs' claims fail because Defendants are obligated and allowed by law to act in the public good and to utilize their police power to safeguard the health and safety of Colorado and its citizens.

9. Plaintiffs' claims are barred, limited or otherwise abrogated by application of the political question doctrine.

10. § 40-2-124, C.R.S., was a proper, reasonable, and necessary exercise of Colorado's legislative authority enacted for, among other reasons, the legitimate public purpose of diversifying, securing, stabilizing, and otherwise safeguarding Colorado's energy supply.

11. § 40-2-124, et.seq., C.R.S., is constitutional on its face and as applied.

12. Some or all of Plaintiffs' claims are barred by the doctrine of sovereign immunity and the bar on direct constitutional claims.

13. In the event that Plaintiffs succeed on any individual claim, and any part or section of § 40-2-124 is found to be unconstitutional, such part may be severed, leaving the remaining parts and sections of the statute in full force and effect.

14. Defendants reserve the right to assert additional defenses as they may be discovered.

WHEREFORE, Defendants request this court to enter judgment in their favor and for other and further relief as this court deems just and proper.

Respectfully submitted this 25th day of July, 2013.

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s/ Kathleen Spalding

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within ANSWER OF DEFENDANTS EPEL, TARPEY, AND PATTON TO PLAINTIFFS' SECOND AMENDED COMPLAINT upon all parties herein by service through the ECF Electronic Case Filing System (ECF) this 25th day of July, 2013.

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