

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 05-cv-807-REB-CBS

JULIANNA BARBER, by and through her next friend, Marcia Barber;
MADELINE BARBER, by and through her next friend, Marcia Barber;
MARCIA BARBER;
COLORADO CROSS-DISABILITY COALITION, a Colorado non-profit corporation; and
AMERICAN COUNCIL OF THE BLIND OF COLORADO, INC., a Colorado non-profit
corporation,

Plaintiffs,

v.

STATE OF COLORADO, DEPARTMENT OF REVENUE;
STATE OF COLORADO, DEPARTMENT OF REVENUE, DIVISION OF MOTOR
VEHICLES;
M. MICHAEL COOK, in her official capacity as Executive Director of the Colorado
Department of Revenue; and
JOAN VECCHI, in her official capacity as Senior Director of the Colorado Division of Motor
Vehicles,

Defendants.

ANSWER

Defendants, through the Colorado Attorney General, hereby submit their Answer to
the Second Amended and Supplemental Complaint (the "Amended Complaint").

INTRODUCTION

1. With regard to paragraph 1 of the Amended Complaint, Defendants state that
applicable Colorado law relating to instruction permits for minor drivers speaks for itself,
therefore to the extent that any allegation in paragraph 1 differs from or is inconsistent with
the Colorado law, the allegation is denied. Defendants admit that Marcia Barber requested
that Julianna be permitted to drive while accompanied by her grandfather. Defendants
deny the remaining allegations contained in paragraph 1 of the Amended Complaint.

JURISDICTION AND VENUE

2. Defendants admit the allegations contained in paragraph 2 of the Amended Complaint.

3. Defendants admit the allegations contained in paragraph 3 of the Amended Complaint.

4. Defendants admit that Julianna Barber is 16 years of age. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 4 of the Amended Complaint and therefore deny the same.

5. Defendants admit that Madeline Barber was born on January 14, 1992. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 5 of the Amended Complaint and therefore deny the same.

6. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 of the Amended Complaint and therefore deny the same.

7. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7 of the Amended Complaint and therefore deny the same.

8. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 of the Amended Complaint and therefore deny the same.

9. Defendants admit the allegations contained in paragraph 9 of the Amended Complaint.

10. Defendants admit the allegations contained in paragraph 10 of the Amended Complaint.

11. Defendants admit the allegations contained in paragraph 11 of the Amended Complaint.

12. Defendants admit the allegations contained in paragraph 12 of the Amended Complaint.

13. Defendants admit that the Department of Revenue and the Division of Motor Vehicles receive federal financial assistance. Defendants deny the remaining allegations contained in paragraph 13 of the Amended Complaint.

14. Defendants admit the allegations contained in paragraph 14 of the Amended Complaint.

15. Defendants deny the allegations contained in paragraph 15 of the Amended Complaint.

16. Defendants admit the allegations contained in paragraph 16 of the Amended Complaint.

17. With regard to paragraph 17 of the Amended Complaint, Defendants admit that from July 1, 2003 to June 30, 2004, the Department of Revenue and the Division of Motor Vehicles received federal funds. Defendants deny the remaining allegations contained in paragraph 17 of the Amended Complaint.

18. With regard to paragraph 18 of the Amended Complaint, Defendants admit that from July 1, 2002 to June 30, 2003, the Department of Revenue and the Division of

Motor Vehicles received federal funds. Defendants deny the remaining allegations contained in paragraph 18 of the Amended Complaint.

FACTS

19. With regard to paragraph 19 of the Amended Complaint, Defendants state that the Colorado Session Laws speak for themselves, and to the extent that any allegation in paragraph 19 differs from or is inconsistent with the Colo. Laws 1999 ch. 334, sec. 1(c) and (d), the allegation is denied.

20. With respect to the allegations contained in paragraph 20 of the Amended Complaint, Defendants state that the statute speaks for itself, and to the extent that any allegation in paragraph 20 differs from or is inconsistent with the statute, the allegation is denied.

21. With respect to the allegations contained in paragraph 21 of the Amended Complaint, Defendants state that the statute speaks for itself, and to the extent that any allegation in paragraph 21 differs from or is inconsistent with the statute, the allegation is denied.

22. With respect to the allegations contained in paragraph 22 of the Amended Complaint, Defendants state that the statute speaks for itself, and to the extent that any allegation in paragraph 22 differs from or is inconsistent with the statute, the allegation is denied.

23. Defendants admit the allegations contained in paragraph 23 of the Amended Complaint.

24. With respect to the allegations contained in paragraph 24 of the Amended Complaint, Defendants state that the statute speaks for itself, and to the extent that any

allegation in paragraph 24 differs from or is inconsistent with the statute, the allegation is denied.

25. Defendants admit that on or about October 13, 2004, Julianna Barber obtained a minor's instruction permit. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 25 of the Amended Complaint and therefore deny the same.

26. With respect to the allegations contained in paragraph 26 of the Amended Complaint, Defendants state that the statute speaks for itself, and to the extent that any allegation in paragraph 26 differs from or is inconsistent with the statute, the allegation is denied.

27. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27 of the Amended Complaint and therefore deny the same.

28. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28 of the Amended Complaint and therefore deny the same.

29. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 29 of the Amended Complaint and therefore deny the same.

30. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30 of the Amended Complaint and therefore deny the same.

31. With respect to the allegations contained in paragraph 31 of the Amended Complaint, Defendants admit that Marcia Barber made an inquiry to the Motor Vehicle Division regarding the Colorado Revised Statutes as they relate to instruction permits for minor drivers. Defendants deny the remaining allegations contained in paragraph 31 of the Amended Complaint.

32. With respect to the allegations contained in paragraph 32 of the Amended Complaint, Defendants admit that Steve Tool responded to Marcia Barber's inquiry. Defendants further state that the November 22, 2004 letter speaks for itself, and to the extent that any allegation in paragraph 24 differs from or is inconsistent with the letter, the allegation is denied. Defendants deny the remaining allegations contained in paragraph 32 of the Amended Complaint.

33. With respect to the allegations contained in paragraph 33 of the Amended Complaint, Defendants state that the December 2, 2004 letter speaks for itself, and to the extent that any allegation in paragraph 33 differs from or is inconsistent with the letter, the allegation is denied.

34. With respect to the allegations contained in paragraph 34 of the Amended Complaint, Defendants admit that Marcia Barber called John Suthers, the Attorney General of the Colorado. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 34 of the Amended Complaint and therefore deny the same.

35. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 35 of the Amended Complaint and therefore deny the same.

36. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 36 of the Amended Complaint and therefore deny the same.

37. With respect to the allegations contained in paragraph 33 of the Amended Complaint, Defendants admit that Marcia Barber wrote to Suthers on January 21 and 25, 2005. Defendants state that the writings speak for themselves, and to the extent that any allegation in paragraph 37 differs from or is inconsistent with the writings, the allegation is denied.

38. With respect to the allegations contained in paragraph 38 of the Amended Complaint, Defendants admit that Chris Menendez wrote a letter to the Colorado Attorney General's Office. Defendants state that the letter speaks for itself, and to the extent that any allegation in paragraph 38 differs from or is inconsistent with the letter, the allegation is denied.

39. With respect to the allegations contained in paragraph 39 of the Amended Complaint, Defendants admit that the Colorado Attorney General's Office wrote a letter to Chris Menendez on February 23, 2005. Defendants state that the letter speaks for itself, and to the extent that any allegation in paragraph 39 differs from or is inconsistent with the letter, the allegation is denied.

40. With respect to the allegations contained in paragraph 40 of the Amended Complaint, Defendants state that the statute speaks for itself, and to the extent that any allegation in paragraph 40 differs from or is inconsistent with the statute, the allegation is denied.

41. With respect to the allegations contained in paragraph 41 of the Amended Complaint, Defendants state that the statute speaks for itself, and to the extent that any allegation in paragraph 41 differs from or is inconsistent with the statute, the allegation is denied.

42. Defendants deny the allegations contained in paragraph 42 of the Amended Complaint.

43. Defendants admit the allegations contained in paragraph 43 of the Amended Complaint.

44. With respect to the allegations contained in paragraph 44 of the Amended Complaint, Defendants state that the statute speaks for itself, and to the extent that any allegation in paragraph 44 differs from or is inconsistent with the statute, the allegation is denied. Defendants deny all other allegations contained in paragraph 44 of the Amended Complaint.

45. With respect to the allegations contained in paragraph 45 of the Amended Complaint, Defendants state that the statute speaks for itself, and to the extent that any allegation in paragraph 45 differs from or is inconsistent with the statute, the allegation is denied.

46. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 46 of the Amended Complaint and therefore deny the same.

47. Defendants admit the Julianna Barber received her driver's license on November 14, 2005.

48. Defendants deny the allegations contained in the first sentence of paragraph 48 of the Amended Complaint. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of paragraph 48 of the Amended Complaint and therefore deny the same.

49. Defendants deny the allegations contained in the paragraph 49 of the Amended Complaint.

50. Defendants deny the allegations contained in paragraph 50 of the Amended Complaint.

51. Defendants deny the allegations contained in paragraph 51 of the Amended Complaint, including all subparts thereto.

52. Defendants deny the allegations contained in paragraph 52 of the Amended Complaint, including all subparts thereto.

53. Defendants deny the allegations contained in the paragraph 53 of the Amended Complaint.

54. The allegations of paragraph 54 of the Amended Complaint constitute a prayer for relief requiring no answer, but to the extent the paragraph may be construed to allege facts against the Defendants, the allegations are denied.

55. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 55 of the Amended Complaint and therefore deny the same.

56. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 56 of the Amended Complaint and therefore deny the same.

57. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 57 of the Amended Complaint and therefore deny the same.

58. Defendants deny the allegations contained in paragraph 58 of the Amended Complaint.

59. Defendants deny the allegations contained in paragraph 59 of the Amended Complaint.

60. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 60 of the Amended Complaint and therefore deny the same.

61. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 61 of the Amended Complaint and therefore deny the same.

62. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 62 of the Amended Complaint and therefore deny the same.

63. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 63 of the Amended Complaint and therefore deny the same.

64. Defendants deny the allegations contained in paragraph 64 of the Amended Complaint.

65. Defendants deny the allegations contained in paragraph 65 of the Amended Complaint.

66. Defendants deny that they discriminated against the Plaintiffs. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 66 of the Amended Complaint and therefore deny the same.

67. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 67 of the Amended Complaint and therefore deny the same.

CLAIM I: THE AMERICANS WITH DISABILITIES ACT

68. Defendants incorporate by reference all responses contained in the preceding paragraphs in this Answer as though fully set forth herein.

69. Defendants admit that the Department of Revenue and the Division of Motor Vehicles are public entities as defined by 42 U.S.C. § 12131.

70. Defendants deny the allegations contained in paragraph 70 of the Amended Complaint.

71. Defendants deny the allegations contained in paragraph 71 of the Amended Complaint.

72. Defendants deny the allegations contained in paragraph 72 of the Amended Complaint.

73. Defendants deny the allegations contained in paragraph 73 of the Amended Complaint, including all subparts thereto.

CLAIM II: SECTION 504 OF THE REHABILITATION ACT

74. Defendants incorporate by reference all responses contained in the preceding paragraphs in this Answer as though fully set forth herein.

75. Defendants admit that the Department of Revenue and the Division of Motor Vehicles receive federal financial assistance. Defendants admit that H. Michael Cooke is the Executive Director of the Colorado Department of Revenue and that Joan Vecchi is the Senior Director of the Colorado Division of Motor Vehicles.

76. Defendants deny the allegations contained in paragraph 76 of the Amended Complaint.

77. Defendants deny the allegations contained in paragraph 77 of the Amended Complaint.

78. Defendants deny the allegations contained in paragraph 78 of the Amended Complaint.

79. Defendants deny the allegations contained in paragraph 79 of the Amended Complaint.

80. Defendants deny the allegations contained in paragraph 80 of the Amended Complaint.

81. The allegations of the "Relief Requested" section of the Amended Complaint constitute a prayer for relief requiring no answer, but to the extent the paragraphs may be construed to allege facts against the Defendants, the allegations are denied.

82. Defendants deny each and every allegation contained within the Amended Complaint unless expressly admitted herein.

AFFIRMATIVE DEFENSES

1. The Amended Complaint fails, in whole or in part, to state a claim upon which relief may be granted;

2. Plaintiffs failed to mitigate their damages, if any;

3. Plaintiffs failed to fulfill all conditions precedent to bringing this action;

4. Plaintiffs' claimed damages, if any, were caused by their own acts or omissions, or were caused by the acts or omissions of third parties over whom the Defendants had no control or right of control;

5. Plaintiffs' claims against Defendants may be barred in whole or in part by the doctrine of Sovereign Immunity pursuant to the Eleventh Amendment, and/or absolute, limited or qualified immunity;

6. Defendants affirmatively assert that Plaintiffs' statutory rights have not been violated and that Plaintiffs have been afforded all of the rights and privileges granted by the Americans with Disabilities Act and the Rehabilitation Act;

7. Defendants' actions and applicable state laws were/are supported by legitimate and rational governmental interests, goals and objectives;

8. Defendants' actions and applicable state laws were/are supported by compelling interests;

9. Plaintiffs' claims are barred by the doctrines of waiver, estoppel and laches;

10. Plaintiffs' claims are not ripe;

11. Plaintiffs' claims for injunctive relief are moot;

12. One or more of the Plaintiffs lack standing to bring this action;

13. The Defendants deny that any action on their part constitutes a violation of any statutory provision cited in the Amended Complaint;

14. The Defendants reserve the right to add additional defenses presently unknown according to the facts of the Amended Complaint that may become known during the course of discovery.

WHEREFORE, Defendants having fully answered the Amended Complaint, pray that the same be dismissed, and that they be awarded the costs incurred in defending this suit, including expert witness fees, attorney fees, and such other and further relief as may be proper and just under the circumstances.

Respectfully submitted this 17th day of February, 2006.

JOHN W. SUTHERS
Attorney General

s/ James X. Quinn

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CERTIFICATE OF SERVICE

I certify that on February 17, 2006, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

Amy F. Robertson
arob@foxrob.com

s/ James X. Quinn