

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 06-cv-00865-LTB-BNB

COLORADO CROSS-DISABILITY COALITION, a Colorado non-profit Corporation,  
LAURA HERSHEY,  
ROBIN STEPHENS,  
CARRIE ANN LUCAS,  
HEATHER REBEKAH RENEE LUCAS, by and through her parent and next friend, CARRIE  
ANN LUCAS  
ADRIANNE EMILY MONIQUE LUCAS, by and through her parent and next friend, CARRIE  
ANN LUCAS, and  
DANIEL WILSON,

Plaintiffs,

v.

THE CITY AND COUNTY OF DENVER, COLORADO,

Defendant.

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**ANSWER OF DEFENDANT CITY AND COUNTY OF DENVER  
TO PLAINTIFFS' THIRD AMENDED AND SUPPLEMENTAL COMPLAINT**

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The Defendant City and County of Denver ("City"), by and through its undersigned attorneys, hereby answers Plaintiffs' Third Amended and Supplemental Complaint (referred to herein as "Complaint") as follows:

**JURISDICTION**

1. With respect to Paragraph 1 of the Complaint, the City admits that this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 1343, and the City denies the allegation that this Court has pendent jurisdiction over claims brought under the laws of the State of Colorado.

2. The City admits the allegations of Paragraph 2 of Plaintiffs' Complaint.

**PARTIES**

3. The City admits that CCDC is a Colorado non-profit corporation, but is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of Paragraph 3 of Plaintiffs' Complaint and therefore denies the same.

4. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 4 of Plaintiffs' Complaint and therefore denies the same.

5. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 5 of Plaintiffs' Complaint and therefore denies the same.

6. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 6 of Plaintiffs' Complaint and therefore denies the same.

7. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 7 of Plaintiffs' Complaint and therefore denies the same.

8. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 8 of Plaintiffs' Complaint and therefore denies the same.

9. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 9 of Plaintiffs' Complaint and therefore denies the same.

10. With respect to Paragraph 10, the City admits it owns the Ellie Caulkins Opera House. The City further admits it has entered into numerous user agreements with different tenants, to use the Ellie Caulkins Opera House for specific periods of time for the presentation of various types of theatrical, musical and other events. The City denies all remaining allegations of Paragraph 10.

11. The City admits that the Opera House was under construction in 2004-2005 and that it opened in October of 2005. The City denies all remaining allegations of Paragraph 11 of Plaintiffs' Complaint.

12. With respect to Paragraph 12, the City affirmatively states that the Opera House is housed within the existing footprint of the Auditorium Theatre and that certain aspects of the Auditorium Theatre were incorporated into the Opera House during construction. The City denies the remaining allegations of Paragraph 12.

13. The City denies the allegations of Paragraph 13 of Plaintiffs' Complaint.

14. With respect to Paragraph 14 of Plaintiffs' Complaint, the City admits that the only access to the orchestra level of the Opera House for people who use wheelchairs or mobility devices is via wheelchair lifts. The City denies all remaining allegations of Paragraph 14.

15. The allegations of Paragraph 15 of Plaintiffs' Complaint contain representations and/or conclusions of law, to which no response is required. To the extent any response is required, the City denies the allegations of Paragraph 15.

16. The allegations of Paragraph 16 of Plaintiffs' Complaint contain representations and/or conclusions of law, to which no response is required. To the extent any response is required, the City denies the allegations of Paragraph 16.

17. The allegations of Paragraph 17 of Plaintiffs' Complaint contain representations and/or conclusions of law, to which no response is required. To the extent any response is required, the City denies the allegations of Paragraph 17.

18. The allegations of Paragraph 18 of Plaintiffs' Complaint contain representations and/or conclusions of law, to which no response is required. To the extent any response is required, the City denies the allegations of Paragraph 18.

19. The allegations of Paragraph 19 of Plaintiffs' Complaint contain representations and/or conclusions of law, to which no response is required. To the extent any response is required, the City denies the allegations of Paragraph 19.

20. The allegations of Paragraph 20 of Plaintiffs' Complaint contain representations and/or conclusions of law, to which no response is required. To the extent any response is required, the City denies the allegations of Paragraph 20.

21. The allegations of Paragraph 21 of Plaintiffs' Complaint contain representations and/or conclusions of law, to which no response is required. To the extent any response is required, the City denies the allegations of Paragraph 21.

22. The allegations of Paragraph 22 of Plaintiffs' Complaint contain representations and/or conclusions of law, to which no response is required. To the extent any response is required, the City denies the allegations of Paragraph 22.

23. The allegations of Paragraph 23 of Plaintiffs' Complaint contain representations and/or conclusions of law, to which no response is required. To the extent any response is required, the City denies the allegations of Paragraph 23.

24. The allegations of Paragraph 24 of Plaintiffs' Complaint contain representations and/or conclusions of law, to which no response is required. To the extent any response is required, the City denies the allegations of Paragraph 24.

25. The allegations of Paragraph 25 of Plaintiffs' Complaint contain representations and/or conclusions of law, to which no response is required. To the extent any response is required, the City denies the allegations of Paragraph 25.

26. The allegations of Paragraph 26 of Plaintiffs' Complaint contain representations and/or conclusions of law, to which no response is required. To the extent any response is required, the City denies the allegations of Paragraph 26.

27. The allegations of Paragraph 27 of Plaintiffs' Complaint contain representations and/or conclusions of law, to which no response is required. To the extent any response is required, the City denies the allegations of Paragraph 27.

28. With respect to Paragraph 28 of Plaintiffs' Complaint, the City admits the wheelchair lifts at the Opera House have accordion doors at either end. The City admits the lifts have occasionally stopped as a result of some interference with the doors. The City denies all remaining allegations of Paragraph 28.

29. The City denies the allegations of Paragraph 29 of Plaintiffs' Complaint.

30. The allegations of Paragraph 30 of Plaintiffs' Complaint contain representations and/or conclusions of law, to which no response is required. To the extent any response is required, the City denies the allegations of Paragraph 30.

31. The allegations of Paragraph 31 of Plaintiffs' Complaint contain representations and/or conclusions of law, to which no response is required. To the extent any response is required, the City denies the allegations of Paragraph 31.

32. With respect to Paragraph 32, the City admits that when the Opera House first opened, some of the designated accessible seats were on a slope. The City affirmatively states it has eliminated the slope as it affects accessible seating. The City denies all remaining allegations of Paragraph 32.

33. The allegations of Paragraph 33 of Plaintiffs' Complaint contain representations and/or conclusions of law, to which no response is required. To the extent any response is required, the City denies the allegations of Paragraph 33.

34. The allegations of Paragraph 34 of Plaintiffs' Complaint contain representations and/or conclusions of law, to which no response is required. To the extent any response is required, the City denies the allegations of Paragraph 34.

35. The allegations of Paragraph 35 of Plaintiffs' Complaint contain representations and/or conclusions of law, to which no response is required. To the extent any response is required, the City denies the allegations of Paragraph 35.

36. The City states that Paragraph 36 of Plaintiffs' Complaint contains representations and/or conclusions of law, to which no response is required. To the extent any response is required, the City denies the allegations of Paragraph 36.

37. The City denies the allegations of Paragraph 37 of Plaintiffs' Complaint.

38. With respect to Paragraph 38 of Plaintiffs' Complaint, the City denies Plaintiffs have suffered any discrimination, or that any illegal discrimination or ADA violations have occurred.

39. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 39 of Plaintiffs' Complaint and therefore denies the same.

40. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 40 of Plaintiffs' Complaint and therefore denies the same.

41. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 41 of Plaintiffs' Complaint and therefore denies the same.

42. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 42 of Plaintiffs' Complaint and therefore denies the same.

43. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 43 of Plaintiffs' Complaint and therefore denies the same.

44. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 44 of Plaintiffs' Complaint and therefore denies the same.

45. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 45 of Plaintiffs' Complaint and therefore denies the same.

46. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 46 of Plaintiffs' Complaint and therefore denies the same.

47. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 47 of Plaintiffs' Complaint and therefore denies the same.

48. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 48 of Plaintiffs' Complaint and therefore denies the same.

49. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 49 of Plaintiffs' Complaint and therefore denies the same.

50. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 50 of Plaintiffs' Complaint and therefore denies the same.

51. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 51 of Plaintiffs' Complaint and therefore denies the same.

52. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 52 of Plaintiffs' Complaint and therefore denies the same.

53. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 53 of Plaintiffs' Complaint and therefore denies the same.

54. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 54 of Plaintiffs' Complaint and therefore denies the same.



55. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 55 of Plaintiffs' Complaint and therefore denies the same.

56. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 56 of Plaintiffs' Complaint and therefore denies the same.

57. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 57 of Plaintiffs' Complaint and therefore denies the same.

58. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 58 of Plaintiffs' Complaint and therefore denies the same.

59. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 59 of Plaintiffs' Complaint and therefore denies the same.

60. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 60 of Plaintiffs' Complaint and therefore denies the same.

61. With respect to Paragraph 61.(a) through (t) of Plaintiffs' Complaint, the City denies any discriminatory design defects exist at the Opera House. The City further denies any violations of the ADA or other applicable law. The City admits that: there are pillars in between some of two designated accessible seats and the adjacent companion seats (sub-paragraph (b.)); access to the designated accessible orchestra level seats is via wheelchair lifts (sub-paragraph

(c.)); and the City has received complaints alleging malfunctions of the wheelchair lifts (general response). The City lacks sufficient knowledge or information to form a belief as to the allegations contained in Paragraphs 61.(m.) and (n.), and therefore denies the same. The City denies all other allegations contained in Paragraph 61.(a) through (t) of Plaintiffs' Complaint, not expressly admitted herein. The City specifically denies any discriminatory design defects or any violation of the ADA or any other applicable law. With respect to Paragraph 61.(s) and (t) of Plaintiffs' Complaint, the City further notes that these sub-paragraphs contain representations and/or conclusions of law, to which no response is required. To the extent any response is required, the City denies the allegations of Paragraph 6.1.(s) and (t).

62. With respect to Paragraph 62 of Plaintiffs' Complaint, the City is without sufficient knowledge or information of the details of Ms. Hershey's attendance, or her desire to attend future performances. The City denies any ADA violations or any illegal discrimination. The City denies all allegations of Paragraph 62 not expressly admitted herein.

63. The City denies the allegations of Paragraph 63.

64. With respect to Paragraph 64 of Plaintiffs' Complaint, the City is without sufficient knowledge or information of the details of their attendance, or their desire to attend future performances. The City denies any ADA violations or any illegal discrimination. The City denies all allegations of Paragraph 64 not expressly admitted herein.

65. The City denies the allegations of Paragraph 65.

66. With respect to Paragraph 66 of Plaintiffs' Complaint, the City is without sufficient knowledge or information of the details of Mr. Wilson's attendance, or her desire to attend future performances. The City denies any ADA violations or any illegal discrimination. The City denies all allegations of Paragraph 66 not expressly admitted herein.

67. The City denies the allegations of Paragraph 67.

68. With respect to Paragraph 68 of Plaintiffs' Complaint, the City is without sufficient knowledge or information of their attendance, or their desire to attend future performances. The City denies any ADA violations or any illegal discrimination. The City denies all allegations of Paragraph 68 not expressly admitted herein.

69. The City denies the allegations of Paragraph 69.

70. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 70 of Plaintiffs' Complaint and therefore denies the same.

71. The City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 71 of Plaintiffs' Complaint and therefore denies the same.

72. With respect to Paragraph 72 of Plaintiffs' Complaint, the City lacks knowledge sufficient to respond to allegations about the CCDC's mission and therefore denies the same. The City specifically denies any illegal discrimination. The City denies all remaining allegations of Paragraph 72.

73. The City denies the allegations of Paragraph 73.

74. With respect to Paragraph 74 of Plaintiffs' Complaint, the City lacks knowledge sufficient to respond to allegations about the CCDC's resources and therefore denies the same. The City specifically denies any illegal discrimination. The City denies all remaining allegations of Paragraph 74.

75. The City denies the allegations of Paragraph 75.

76. The City denies the allegations of Paragraph 76.

77. The City denies the allegations of Paragraph 77.

78. The City denies the allegations of Paragraph 78.

79. The City denies the allegations of Paragraph 79.

80. The City denies the allegations of Paragraph 80.

81. With respect to Paragraph 81 of Plaintiffs' Complaint, the City lacks knowledge sufficient to respond to allegations about the CCDC's mission and therefore denies the same.

The City specifically denies any illegal discrimination. The City denies all remaining allegations of Paragraph 81.

82. The allegations of Paragraph 82 of Plaintiffs' Complaint contain representations and/or conclusions of law, to which no response is required. To the extent any response is required, the City denies the allegations of Paragraph 82.

83. The City denies the allegations of Paragraph 83.

**FIRST CLAIM FOR RELIEF**  
**(Violation of the Americans with Disabilities Act)**

84. The City hereby incorporates by reference the answers and averments contained in Paragraphs 1 through 83 set forth above.

85. The references to Title II of the ADA set forth in Paragraph 85 of Plaintiffs' Complaint speak for themselves and do not require a response from the City. To the extent a response is required, the allegations of Paragraph 85 are denied.

86. The City admits the allegations of Paragraph 86.

87. The City denies the allegations of Paragraph 87.

88. The City denies the allegations of Paragraph 88.

**SECOND CLAIM FOR RELIEF**  
**(Violation of Rehabilitation Act)**

89. The City hereby incorporates by reference the answers and averments contained in Paragraphs 1 through 89 set forth above.

90. The references to the Rehabilitation Act set forth in Paragraph 90 of Plaintiffs' Complaint speak for themselves and do not require a response from the City. To the extent a response is required, the allegations of Paragraph 90 are denied.

91. The City admits the allegations of Paragraph 91.

92. The City denies the allegations of Paragraph 92.

93. The City denies the allegations of Paragraph 93.

**THIRD CLAIM FOR RELIEF**  
**(Colorado Anti-Discrimination Act)**

94. The City hereby incorporates by reference the answers and averments contained in Paragraphs 1 through 93 set forth above.

95. With respect to Paragraph 95 of Plaintiffs' Complaint, the City states that the Colorado Anti-Discrimination Act speaks for itself and that no response by the City is required. To the extent a response is required, the allegations of Paragraph 95 are denied.

96. With respect to Paragraph 96 of Plaintiffs' Complaint, the City states that the Colorado Anti-Discrimination Act speaks for itself and that no response by the City is required. Moreover, the allegations of Paragraph 96 constitute requests for legal conclusions to which the City is not required to respond. To the extent a response is required, the allegations of Paragraph 96 are denied.

97. With respect to Paragraph 97 of Plaintiffs' Complaint, the City states that the Colorado Anti-Discrimination Act speaks for itself and that no response by the City is required.

Moreover, the allegations of Paragraph 97 constitute requests for legal conclusions to which the City is not required to respond. To the extent a response is required, the allegations of Paragraph 97 are denied.

98. The City denies the allegations of Paragraph 98.

99. With respect to Paragraph 99 of Plaintiffs' Complaint, the City states that the Colorado Anti-Discrimination Act speaks for itself and that no response by the City is required. The City denies that it committed any offense under such Act.

100. The City denies the allegations of Paragraph 100.

### **AFFIRMATIVE DEFENSES**

1. Plaintiffs' Complaint fails to state a claim against the City upon which relief may be granted.

2. Insofar as Plaintiffs claim that the Opera House as designed and/or constructed is in violation of Title II of the ADA, the Opera House was created as an alteration to the original Quigg Newton Auditorium structure and was designed and constructed to fit within the existing footprint of the Quigg Newton Auditorium structure. The Opera House was therefore designed and constructed to be made accessible to persons with disabilities to the maximum extent feasible consistent with existing structural conditions and existing physical and site constraints within the Quigg Newton Auditorium structure.

3. Insofar as Plaintiffs claim that the Opera House as designed and/or constructed is in violation of Title II of the ADA, the Quigg Newton Auditorium is a qualified historic building or facility under Title II of the ADA since it is listed on the National Register of Historic Places and is designated as a Landmark structure designated for preservation under Chapter 30, Denver Revised Municipal Code. This status has constrained the City from building the Opera House

outside of the existing footprint of the Quigg Newton Auditorium structure. The Opera House was therefore designed and constructed to be made accessible to persons with disabilities to the maximum extent feasible consistent with the historic significance of the Quigg Newton Auditorium structure.

4. Plaintiffs have not demonstrated intentional discrimination or deliberate indifference against them by the City and are therefore not entitled to compensatory damages from the City under Title II of the ADA.

5. Plaintiffs have failed to minimize or mitigate their damages, if any.

6. 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 City had no control or right of control.

7. Plaintiffs' claims against the City may be barred in whole or in part by the doctrine of sovereign or governmental immunity and/or absolute, limited or qualified immunity.

8. Plaintiffs' claims are not ripe.

9. One or more the Plaintiffs are not proper parties or real parties in interest as to all claims for relief asserted in Plaintiffs' Complaint.

10. One of more of the Plaintiffs lack standing.

11. Plaintiffs' claims for injunctive relief are moot.

12. Plaintiffs' claims are barred by the doctrines of undue burden, necessity and fundamental alteration.

13. Plaintiffs' claims are barred by the doctrines of waiver, estoppel, ratification and laches.

14. The City complied with all applicable laws, statutes and regulations.

15. Plaintiffs' claims are barred by applicable statutory limitations, exceptions and exemptions.

16. Plaintiffs' claims are barred in whole or in part due to their failure to exhaust remedies.

WHEREFORE, the City, having fully answered Plaintiffs' Complaint, requests this Honorable Court to dismiss Plaintiffs' Complaint against the City with prejudice, that Plaintiffs take nothing by their Complaint and that the City be granted its costs and attorney fees in this matter, together with such other and further relief as the Court may deem appropriate.

Respectfully submitted this 6<sup>th</sup> day of November, 2007.

s/ Elizabeth L. "Booka" Smith

Elizabeth A. Starrs

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*Special Counsel for Defendant City and County of  
Denver*



CERTIFICATE OF SERVICE

The undersigned does hereby certify that on November 6, 2007, a true and correct copy of the foregoing **ANSWER OF DEFENDANT CITY AND COUNTY OF DENVER TO PLAINTIFFS' THIRD AMENDED AND SUPPLEMENTAL COMPLAINT** was served via U.S. mail to the following:

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/s/ Adah Wentworth

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