

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION

THE STATE OF TENNESSEE, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
EDUCATION, *et al.*,

Defendants.

Case No. 3:21-cv-00308

District Judge Charles E. Atchley, Jr.

DEFENDANTS' ANSWER TO PLAINTIFFS' COMPLAINT

Defendants, through undersigned counsel, hereby answer Plaintiffs' Complaint, ECF No. 1, in the above-captioned matter as follows:

1. Defendants admit that President Biden issued Executive Order No. 13,988, 86 Fed. Reg. 7023-25 (Jan. 20, 2021). The remainder of this paragraph consists of Plaintiffs' legal conclusions and characterization of their claims, to which no response is required. Should responses be deemed necessary, Defendants deny the allegations contained in this paragraph.
2. The first sentence of this paragraph characterizes certain "interpretations" by Defendants EEOC and the Department of Education (ED). Defendants respectfully refer the Court to the cited documents for a complete and accurate statement of their contents. Defendants deny this sentence to the extent it is inconsistent with those documents. The remainder of this paragraph consists of Plaintiffs' legal conclusions, and characterizes the Supreme Court's opinion in *Bostock*, to which Defendants are not required to respond. Defendants respectfully refer the Court to the cited decision for a complete and accurate statement of its contents. If responses are deemed necessary, Defendants deny the allegations contained in this paragraph.

3. This paragraph consists of Plaintiffs' legal conclusions and characterization of their claims, to which no response is required. If responses are deemed necessary, Defendants deny the allegations contained in this paragraph.

4. This paragraph characterizes a Fact Sheet issued by ED and the Department of Justice. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. Defendants deny the allegations in this paragraph to the extent they are inconsistent with this document.

5. This paragraph characterizes a "Technical Assistance Document" issued upon approval by the EEOC Chair. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. Defendants deny this paragraph to the extent it is inconsistent with those documents. If responses are deemed necessary, Defendant EEOC denies the allegations contained in this paragraph. Further, the Defendant EEOC avers that because the EEOC Document restates established, voted positions of the Commission it is within the Chair's power to issue it. 29 C.F.R. § 1695.

6. Defendants lack knowledge or information sufficient to admit or deny the allegation contained in the first sentence. The second sentence characterizes the interpretative documents issued by ED and EEOC. Defendants respectfully refer the Court to the cited documents for a complete and accurate statement of their contents. Defendants deny this sentence to the extent it is inconsistent with that document. The third sentence consists of a conclusion of law to which no response is required. If a response is deemed necessary, Defendants deny the allegation contained in the third sentence.

7. This paragraph consists of Plaintiffs' characterization of this lawsuit and a conclusion of law to which no response is required. If a response is deemed necessary, Defendants deny the allegation contained in this paragraph other than to admit that these are the plaintiffs in this lawsuit.

8. This paragraph consists of legal conclusions, to which no response is required.
9. This paragraph consists of legal conclusions, to which no response is required.
10. This paragraph consists of legal conclusions, to which no response is required. If a response is deemed necessary, Defendants lack knowledge or information sufficient to admit or deny.
11. The first sentence of this paragraph consists of legal conclusions, to which no response is required. If a response is deemed necessary, Defendants lack knowledge or information sufficient to admit or deny. Defendants lack knowledge or information sufficient to admit or deny the second sentence of this paragraph.
12. The first sentence of this paragraph consists of legal conclusions, to which no response is required. Defendants lack knowledge or information sufficient to admit or deny the second sentence of this paragraph. Defendants admit the third sentence of this paragraph.
13. This paragraph consists of legal conclusions, to which no response is required. If a response is deemed necessary, Defendants lack knowledge or information sufficient to admit or deny.
14. Defendants are without knowledge sufficient to admit or deny the allegations of the paragraph because it is unclear which “estimates” Plaintiffs are referencing and whether “fiscal year 2020-2021” means Fiscal Year 2020 or Fiscal Year 2021. In addition, Defendants are without knowledge sufficient to admit or deny the allegations of the paragraph concerning all federal funding received by Tennessee Department of Education and public higher educational institutions in Tennessee, including from government entities other than Defendants. Defendants aver that USASpending.gov reports that Tennessee Department of Education received significant federal financial assistance in Fiscal Year 2020 and Fiscal Year 2021. Defendants also aver that public higher education institutions in Tennessee received federal funding in Fiscal Year 2020 and Fiscal Year 2021.
15. This paragraph consists of legal conclusions, to which no response is required.

16. This paragraph consists of legal conclusions, to which no response is required. Defendant EEOC lacks information to confirm or deny the remainder of this paragraph.
17. Defendants admit the allegations in this paragraph.
18. Defendants admit the allegations in this paragraph.
19. Defendants deny the allegation contained in this paragraph except to admit that Defendant EEOC is the federal agency charged with enforcement of Title VII.
20. Defendants deny the allegations contained in this paragraph except to admit that Charlotte A. Burrows is the Chair of the EEOC, that the Chair has certain responsibilities for the agency, and that the Chair is sued in her official capacity.
21. Defendants admit the allegations in this paragraph except to note that the authorities cited do not support the allegation.
22. Defendants admit the allegations in this paragraph.
23. Defendants admit the allegations in this paragraph except to note that the authorities cited do not support the allegation.
24. This paragraph consists of Plaintiffs' conclusion of law, to which no response is required. If a response is deemed necessary, Defendants deny the allegation contained in this paragraph.
25. This paragraph consists of Plaintiffs' conclusion of law to which no response is required. If a response is deemed necessary, Defendants deny the allegation contained in this paragraph.
26. This paragraph consists of Plaintiffs' conclusion of law to which no response is required. If a response is deemed necessary, Defendants deny the allegation contained in this paragraph.
27. This paragraph consists of Plaintiffs' conclusion of law to which no response is required. If a response is deemed necessary, Defendants deny the allegation contained in this paragraph.
28. This paragraph consists of Plaintiffs' conclusion of law to which no response is required. If a response is deemed necessary, Defendants deny the allegation contained in this paragraph.

A. The allegations in Factual Allegations paragraph A consist of Plaintiffs' conclusion of law and characterization of the Supreme Court's decision in *Bostock*, to which no response is required. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. Defendants deny the allegations in this paragraph to the extent they are inconsistent with *Bostock*.

29. This paragraph consists of Plaintiffs' conclusion of law and characterization of the Supreme Court's decision in *Bostock*, to which no response is required. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. Defendants deny the allegations in this paragraph to the extent they are inconsistent with *Bostock*.

30. This paragraph consists of Plaintiffs' conclusion of law and characterization of the Supreme Court's decision in *Bostock*, to which no response is required. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. Defendants deny the allegations in this paragraph to the extent they are inconsistent with *Bostock*.

31. This paragraph consists of Plaintiffs' conclusion of law and characterization of the Supreme Court's decision in *Bostock*, to which no response is required. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. Defendants deny the allegations in this paragraph to the extent they are inconsistent with *Bostock*.

32. This paragraph consists of Plaintiffs' conclusion of law and characterization of the Supreme Court's decision in *Bostock*, to which no response is required. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. Defendants deny the allegations in this paragraph to the extent they are inconsistent with *Bostock*.

33. This paragraph consists of Plaintiffs' conclusion of law and characterization of the Supreme Court's decision in *Bostock*, to which no response is required. Defendants respectfully refer the

Court to the cited document for a complete and accurate statement of its contents. Defendants deny the allegations in this paragraph to the extent they are inconsistent with *Bostock*.

34. This paragraph consists of Plaintiffs' conclusion of law and characterization of the Supreme Court's decision in *Bostock*, to which no response is required. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. Defendants deny the allegations in this paragraph to the extent they are inconsistent with *Bostock*.

35. This paragraph consists of Plaintiffs' conclusion of law and characterization of the Supreme Court's decision in *Bostock*, to which no response is required. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. Defendants deny the allegations in this paragraph to the extent they are inconsistent with *Bostock*.

36. This paragraph consists of Plaintiffs' conclusion of law and characterization of the Supreme Court's decision in *Bostock*, to which no response is required. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. Defendants deny the allegations in this paragraph to the extent they are inconsistent with *Bostock*.

37. This paragraph consists of Plaintiffs' conclusion of law and characterization of the Supreme Court's decision in *Bostock*, to which no response is required. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. Defendants deny the allegations in this paragraph to the extent they are inconsistent with *Bostock*.

38. This paragraph consists of Plaintiffs' conclusion of law and characterization of the Supreme Court's decision in *Bostock*, to which no response is required. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. Defendants deny the allegations in this paragraph to the extent they are inconsistent with *Bostock*.

39. This paragraph consists of Plaintiffs' conclusion of law and characterization of the Supreme Court's decision in *Bostock*, to which no response is required. Defendants respectfully refer the

Court to the cited document for a complete and accurate statement of its contents. Defendants deny the allegations in this paragraph to the extent they are inconsistent with *Bostock*.

B. Factual Allegations paragraph B consists of Plaintiffs' conclusion of law and characterization of Executive Order No. 13,988, 86 Fed. Reg. 7023-25 (Jan. 20, 2021), to which no response is required. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph.

40. This paragraph consists of Plaintiffs' conclusion of law and characterization of Executive Order No. 13,988, 86 Fed. Reg. 7023-25 (Jan. 20, 2021), to which no response is required. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with Executive Order No. 13,988.

41. This paragraph consists of Plaintiffs' conclusion of law and characterization of Executive Order No. 13,988, 86 Fed. Reg. 7023-25 (Jan. 20, 2021), to which no response is required. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with Executive Order No. 13,988.

42. This paragraph consists of Plaintiffs' conclusion of law and characterization of Executive Order No. 13,988, 86 Fed. Reg. 7023-25 (Jan. 20, 2021), to which no response is required. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with Executive Order No. 13,988.

43. This paragraph consists of Plaintiffs' conclusion of law and characterization of Executive Order No. 13,988, 86 Fed. Reg. 7023-25 (Jan. 20, 2021), to which no response is required.

Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with Executive Order No. 13,988.

44. This paragraph consists of Plaintiffs' characterization of a DOJ Memorandum, to which no response is required. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the DOJ Memorandum.

45. This paragraph consists of Plaintiffs' characterization of the ED documents, to which no response is required. Defendants respectfully refer the Court to the cited documents for a complete and accurate statement of their contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the documents.

46. Defendants admit the allegations in this paragraph.

47. This paragraph consists of Plaintiffs' characterization of the ED Interpretation, to which no response is required. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the Interpretation.

48. This paragraph consists of Plaintiffs' legal conclusion and characterization of a January 8, 2021 ED Memorandum, to which no response is required. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the Memorandum.

49. This paragraph consists of Plaintiffs' legal conclusion and characterization of the ED Interpretation, to which no response is required. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. If a response is deemed

necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the Interpretation.

50. This paragraph consists of Plaintiffs' legal conclusion and characterization of the ED Interpretation, to which no response is required. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the Interpretation.

51. This paragraph consists of Plaintiffs' legal conclusion and characterization of the ED Interpretation, to which no response is required. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the Interpretation.

52. This paragraph consists of Plaintiffs' legal conclusion and characterization of the ED Interpretation, to which no response is required. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the Interpretation.

53. This paragraph consists of Plaintiffs' legal conclusion and characterizations of Titles VII and IX, to which no response is required. Defendants respectfully refer the Court to the statutes for a complete and accurate statement of their contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the statutes.

54. This paragraph consists of Plaintiffs' legal conclusion and characterization of the ED Interpretation, to which no response is required. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. If a response is deemed

necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the Interpretation.

55. This paragraph consists of Plaintiffs' legal conclusion and characterization of the ED Interpretation, to which no response is required. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the Interpretation.

56. This paragraph consists of Plaintiffs' legal conclusion and characterization of the ED Interpretation, and certain court decisions, to which no response is required. Defendants respectfully refer the Court to the cited documents for a complete and accurate statement of their contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the Interpretation and the court decisions cited.

57. This paragraph consists of Plaintiffs' legal conclusion and characterization of the ED Interpretation, to which no response is required. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the Interpretation.

58. This paragraph consists of Plaintiffs' legal conclusion and characterization of the ED Interpretation, to which no response is required. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the Interpretation.

59. This paragraph consists of Plaintiffs' legal conclusion and characterization of the ED Interpretation and a January 17, 2021 Memorandum, to which no response is required. Defendants

respectfully refer the Court to the cited documents for a complete and accurate statement of their contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the cited documents.

60. This paragraph consists of Plaintiffs' legal conclusion and characterization of the ED Interpretation, to which no response is required. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the Interpretation.

61. This paragraph consists of Plaintiffs' legal conclusion and characterization of the ED Interpretation, to which no response is required. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the Interpretation.

62. This paragraph consists of Plaintiffs' legal conclusion, to which no response is required. If a response is deemed necessary, Defendants deny the allegations in this paragraph.

63. Admits that the "Dear Educator" letter was issued. This paragraph otherwise consists of Plaintiffs' legal conclusion and characterization of the "Dear Educator" letter, to which no response is required. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the Letter.

64. Defendants admit the allegations in this paragraph.

65. This paragraph consists of Plaintiffs' characterization of the Fact Sheet, to which no response is required. Defendants respectfully refer the Court to the cited document for a complete

and accurate statement of its contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the Fact Sheet.

66. This paragraph consists of Plaintiffs' characterization of the Supreme Court's decision in *Bostock* and the Fact Sheet, to which no response is required. Defendants respectfully refer the Court to the cited documents for a complete and accurate statement of their contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the documents.

67. This paragraph consists of Plaintiffs' characterization of the Supreme Court's decision in *Bostock* and the Fact Sheet, to which no response is required. Defendants respectfully refer the Court to the cited documents for a complete and accurate statement of their contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the documents.

68. This paragraph consists of Plaintiffs' characterization of the Supreme Court's decision in *Bostock* and the Fact Sheet, to which no response is required. Defendants respectfully refer the Court to the cited documents for a complete and accurate statement of their contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the documents.

69. This paragraph consists of Plaintiffs' characterization of the Supreme Court's decision in *Bostock* and the Fact Sheet, to which no response is required. Defendants respectfully refer the Court to the cited documents for a complete and accurate statement of their contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the documents.

70. Admits that a revised version of the Fact Sheet: Facility/Bathroom Access and Gender Identity was posted on the EEOC's website on June 15, 2021. This paragraph otherwise consists of

Plaintiffs' characterization of the Fact Sheet, to which no response is required. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the Fact Sheet.

71. Admits that a statement of interested was filed on June 17, 2021. This paragraph otherwise consists of Plaintiffs' characterization of the statement of interest, to which no response is required. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the document.

72. This paragraph consists of a conclusion of law, to which no response is required. Defendants respectfully refer the Court to the cited case for a complete and accurate statement of its contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the cited case.

73. This paragraph consists of a conclusion of law and characterization of a statute, to which Defendants are not required to respond. Defendants respectfully refer the Court to the cited statute for a complete and accurate statement of its contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the cited statute.

74. Defendants admit that on June 15, 2021 Defendant EEOC issued the technical assistance document "Protections Against Employment Discrimination Based on Sexual Orientation or Gender Identity," which can be accessed at the web address in this paragraph. Defendants further admits that Exhibit D is an accurate copy of the document. Defendants deny any additional allegations contained in this paragraph.

75. This paragraph consists of a conclusion of law and characterization of a technical assistance document, to which Defendants are not required to respond. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the cited document.

76. Defendants admit the allegations contained in this paragraph.

77. This paragraph consists of a characterization of a technical assistance document, to which Defendants are not required to respond. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the cited document.

78. This paragraph consists of a characterization of a technical assistance document, to which Defendants are not required to respond. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the cited document.

79. This paragraph consists of a legal conclusion and characterization of a technical assistance document, to which Defendants are not required to respond. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the cited document.

80. This paragraph consists of a legal conclusion and characterization of a technical assistance document, to which Defendants are not required to respond. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. If a response is

deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the cited document.

81. This paragraph consists of a legal conclusion and characterizations of a technical assistance document and the Supreme Court's decision in *Bostock*, to which Defendants are not required to respond. Defendants respectfully refer the Court to the cited documents for a complete and accurate statement of their contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the cited documents.

82. This paragraph consists of a characterization of a technical assistance document, to which Defendants are not required to respond. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the cited document.

83. This paragraph consists of a characterization of a technical assistance document, to which Defendants are not required to respond. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the cited document.

84. This paragraph consists of a characterization of a technical assistance document, to which Defendants are not required to respond. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the cited document.

85. This paragraph consists of a characterization of a technical assistance document, to which Defendants are not required to respond. Defendants respectfully refer the Court to the cited

document for a complete and accurate statement of its contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the cited document.

86. This paragraph consists of a legal conclusion and characterizations of a technical assistance document and the Supreme Court's decision in *Bostock*, to which Defendants are not required to respond. Defendants respectfully refer the Court to the cited documents for a complete and accurate statement of their contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the cited documents.

87. This paragraph consists of a legal conclusion and characterizations of a technical assistance document, a DOJ Memorandum, and the Supreme Court's decision in *Bostock*, to which Defendants are not required to respond. Defendants respectfully refer the Court to the cited documents for a complete and accurate statement of their contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the cited documents.

88. Defendants admit the allegation contained in this paragraph and aver that, as the EEOC Document restates established, voted positions of the Commission, an additional Commission vote was not required. 29 C.F.R. § 1695.

89. Defendants admit the allegation in this paragraph and aver that, as the EEOC Document restates established, voted positions of the Commission, an additional Commission vote was not required. 29 C.F.R. § 1695.

90. Defendants admit the allegation contained in this paragraph and aver that, as the EEOC Document restates established, voted positions of the Commission, an additional Commission vote was not required. 29 C.F.R. § 1695.

91. Defendants admit the allegation contained in this paragraph and aver that, as the EEOC Document restates established, voted positions of the Commission, an additional Commission vote was not required. 29 C.F.R. § 1695.

92. This paragraph consists of a characterization of a technical assistance document, to which Defendants are not required to respond. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the cited document.

E. Factual Allegations paragraph E consists of Plaintiffs' conclusion of law to which no response is required. If a response is deemed necessary, Defendants deny the allegation contained in this paragraph.

93. This paragraph consists of a characterization of the Interpretation, to which Defendants are not required to respond. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. If a response is deemed necessary, Defendants deny the allegations to the extent they are inconsistent with the cited document.

94. This paragraph consists of a characterization of the Interpretation, to which Defendants are not required to respond. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. If a response is deemed necessary, Defendants deny the allegations to the extent they are inconsistent with the cited document.

95. This paragraph consists of a characterization of a technical assistance document, to which Defendants are not required to respond. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the cited document.

96. This paragraph consists of a characterization of a technical assistance document, to which Defendants are not required to respond. Defendants respectfully refer the Court to the cited document for a complete and accurate statement of its contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the cited document.

97. Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph.

98. This paragraph consists of Plaintiffs' conclusion of law and characterization of certain state statutes to which no response is required. Defendants respectfully refer the Court to the cited statutes for a complete and accurate statement of their contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the cited document.

99. This paragraph consists of Plaintiffs' conclusion of law and characterization of certain state statutes to which no response is required. Defendants respectfully refer the Court to the cited statutes for a complete and accurate statement of their contents. If a response is deemed necessary, Defendants deny the allegations in this paragraph to the extent they are inconsistent with the cited document.

100. This paragraph consists of Plaintiffs' conclusion of law to which no response is required. If a response is deemed necessary, Defendants deny the allegations in this paragraph.

101. This paragraph consists of Plaintiffs' conclusion of law to which no response is required. If a response is deemed necessary, Defendants deny the allegations in this paragraph.

102. This paragraph consists of Plaintiffs' conclusion of law to which no response is required. If a response is deemed necessary, Defendants deny the allegations in this paragraph.

103. This paragraph consists of Plaintiffs' conclusion of law to which no response is required. If a response is deemed necessary, Defendants deny the allegations in this paragraph.

104. This paragraph consists of Plaintiffs' conclusion of law to which no response is required. If a response is deemed necessary, Defendants deny the allegations in this paragraph.

105. This paragraph consists of Plaintiffs' conclusion of law to which no response is required. If a response is deemed required, Defendant EEOC denies the allegation contained in this paragraph.

106. This paragraph consists of Plaintiffs' conclusion of law, characterization of certain state laws and policies, and of prior federal regulations and prior guidance, to which no response is required. Defendants respectfully refer the Court to the cited laws, policies, regulations, and guidance, for a complete and accurate statement of their contents. To the extent that a response is required, Defendants lack knowledge or information sufficient to admit or deny the allegations in this paragraph.

107. This paragraph consists of Plaintiffs' conclusion of law, and characterization of certain agency documents, to which no response is required. If a response is deemed required, Defendants deny the allegation contained in this paragraph.

108. This paragraph consists of Plaintiffs' conclusion of law, and characterization of certain agency documents, to which no response is required. If a response is deemed required, Defendants deny the allegation contained in this paragraph.

109. This paragraph consists of Plaintiffs' conclusion of law, and characterization of certain agency documents, to which no response is required. If a response is deemed required, Defendants deny the allegation contained in this paragraph.

110. Defendants restate and incorporate, as though fully set forth herein, the responses set forth in the preceding paragraphs.

111. This paragraph consists of Plaintiffs' conclusion of law, and characterization of the Administrative Procedure Act, to which no response is required. Defendants respectfully refer the Court to the cited statute, for a complete and accurate statement of its contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph to the extent inconsistent with the statute.

112. This paragraph consists of Plaintiffs' conclusion of law, and characterization of certain agency documents, to which no response is required. Defendants respectfully refer the Court to the cited documents, for a complete and accurate statement of their contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

113. This paragraph consists of Plaintiffs' conclusion of law, and characterization of certain agency documents, to which no response is required. Defendants respectfully refer the Court to the cited documents, for a complete and accurate statement of their contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph to the extent inconsistent with the documents and the law.

114. This paragraph consists of Plaintiffs' conclusion of law, to which no response is required. If a response is deemed required, Defendants deny the allegations contained in this paragraph to the extent inconsistent with the statute.

115. This paragraph consists of Plaintiffs' conclusion of law, to which no response is required. If a response is deemed required, Defendants deny the allegations contained in this paragraph to the extent inconsistent with the statute.

116. This paragraph consists of Plaintiffs' conclusion of law, and characterization of certain agency documents and case law, to which no response is required. Defendants respectfully refer the Court to the cited documents, for a complete and accurate statement of their contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

117. This paragraph consists of Plaintiffs' conclusion of law, and characterization of certain agency documents and case law, to which no response is required. Defendants respectfully refer the Court to the cited documents, for a complete and accurate statement of their contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

118. This paragraph consists of Plaintiffs' conclusion of law, and characterization of certain agency documents and case law, to which no response is required. Defendants respectfully refer the Court to the cited documents, for a complete and accurate statement of their contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

119. This paragraph consists of Plaintiffs' conclusion of law, and characterization of certain agency documents and statutes, to which no response is required. Defendants respectfully refer the Court to the cited documents, for a complete and accurate statement of their contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

120. Defendants restate and incorporate, as though fully set forth herein, the responses set forth in the preceding paragraphs.

121. This paragraph consists of Plaintiffs' conclusion of law, and characterization of the Administrative Procedure Act, to which no response is required. Defendants respectfully refer the Court to the cited statute for a complete and accurate statement of its contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph to the extent inconsistent with the statute.

122. This paragraph consists of Plaintiffs' conclusion of law, and characterization of certain case law, to which no response is required. Defendants respectfully refer the Court to the cited document, for a complete and accurate statement of its contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph to the extent inconsistent with the law.

123. This paragraph consists of Plaintiffs' conclusion of law, and characterization of certain case law, to which no response is required. Defendants respectfully refer the Court to the cited document, for a complete and accurate statement of its contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph to the extent inconsistent with the law.

124. This paragraph consists of Plaintiffs' conclusion of law, and characterization of certain case law, to which no response is required. Defendants respectfully refer the Court to the cited document, for a complete and accurate statement of its contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph to the extent inconsistent with the law.

125. This paragraph consists of Plaintiffs' conclusion of law, and characterization of certain agency documents, to which no response is required. Defendants respectfully refer the Court to the cited documents, for a complete and accurate statement of their contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

126. This paragraph consists of Plaintiffs' conclusion of law, and characterization of certain agency documents, to which no response is required. Defendants respectfully refer the Court to the cited documents, for a complete and accurate statement of their contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

127. This paragraph consists of Plaintiffs' conclusion of law, and characterization of certain agency documents, to which no response is required. Defendants respectfully refer the Court to the cited documents, for a complete and accurate statement of their contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

128. This paragraph consists of Plaintiffs' conclusion of law, and characterization of certain agency documents and a statute, to which no response is required. Defendants respectfully refer the Court to the cited documents, for a complete and accurate statement of their contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

129. Defendants restate and incorporate, as though fully set forth herein, the responses set forth in the preceding paragraphs.

130. This paragraph consists of Plaintiffs' conclusion of law, and characterization of the Administrative Procedure Act, to which no response is required. Defendants respectfully refer the Court to the cited statute for a complete and accurate statement of its contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph to the extent inconsistent with the statute.

131. This paragraph consists of Plaintiffs' conclusion of law, and characterization of certain agency documents, to which no response is required. Defendants respectfully refer the Court to the cited documents, for a complete and accurate statement of their contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

132. This paragraph consists of Plaintiffs' conclusion of law, and characterization of certain agency documents and a statute, to which no response is required. Defendants respectfully refer the Court to the cited documents and statute, for a complete and accurate statement of their contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

133. This paragraph consists of Plaintiffs' conclusion of law, and characterization of certain agency documents and regulations, to which no response is required. Defendants respectfully refer the Court to the cited documents and regulations, for a complete and accurate statement of their contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

134. This paragraph consists of Plaintiffs' conclusion of law, and characterization of certain agency documents and statute, to which no response is required. Defendants respectfully refer the Court to the cited documents and statute, for a complete and accurate statement of their contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

135. Defendants restate and incorporate, as though fully set forth herein, the responses set forth in the preceding paragraphs.

136. This paragraph consists of Plaintiffs' conclusion of law, and characterization of the Administrative Procedure Act, to which no response is required. Defendants respectfully refer the Court to the cited statute for a complete and accurate statement of its contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

137. This paragraph consists of Plaintiffs' conclusion of law, and characterization of certain caselaw, to which no response is required. Defendants respectfully refer the Court to the cited caselaw for a complete and accurate statement of its contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph to the extent inconsistent with the caselaw.

138. This paragraph consists of Plaintiffs' conclusion of law, and characterization of certain caselaw, to which no response is required. Defendants respectfully refer the Court to the cited caselaw for a complete and accurate statement of its contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph to the extent inconsistent with the caselaw.

139. This paragraph consists of Plaintiffs' conclusion of law, and characterization of certain caselaw, to which no response is required. Defendants respectfully refer the Court to the cited caselaw for a complete and accurate statement of its contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph to the extent inconsistent with the caselaw.

140. This paragraph consists of Plaintiffs' conclusion of law, and characterization of certain agency documents and caselaw, to which no response is required. Defendants respectfully refer the

Court to the cited documents and caselaw, for a complete and accurate statement of their contents.
If a response is deemed required, Defendants deny the allegations contained in this paragraph.

141. This paragraph consists of Plaintiffs' conclusion of law, and characterization of certain agency documents and caselaw, to which no response is required. Defendants respectfully refer the Court to the cited documents and caselaw, for a complete and accurate statement of their contents.
If a response is deemed required, Defendants deny the allegations contained in this paragraph.

142. This paragraph consists of Plaintiffs' conclusion of law, and characterization of certain agency documents and a statute, to which no response is required. Defendants respectfully refer the Court to the cited documents and statute, for a complete and accurate statement of their contents.
If a response is deemed required, Defendants deny the allegations contained in this paragraph.

143. Defendants restate and incorporate, as though fully set forth herein, the responses set forth in the preceding paragraphs.

144. This paragraph consists of Plaintiffs' conclusion of law, and characterization of the Administrative Procedure Act, to which no response is required. Defendants respectfully refer the Court to the cited statute for a complete and accurate statement of its contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

145. This paragraph consists of Plaintiffs' conclusion of law, and characterization of certain caselaw, to which no response is required. Defendants respectfully refer the Court to the cited caselaw for a complete and accurate statement of its contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph to the extent inconsistent with the caselaw.

146. This paragraph consists of Plaintiffs' conclusion of law, to which no response is required. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

147. This paragraph consists of Plaintiffs' conclusion of law, to which no response is required. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

148. This paragraph consists of Plaintiffs' conclusion of law, and characterization of certain agency documents and caselaw, to which no response is required. Defendants respectfully refer the Court to the cited documents and caselaw for a complete and accurate statement of its contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

149. This paragraph consists of Plaintiffs' conclusion of law, and characterization of certain agency documents, to which no response is required. Defendants respectfully refer the Court to the cited documents, for a complete and accurate statement of their contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

150. Defendants restate and incorporate, as though fully set forth herein, the responses set forth in the preceding paragraphs.

151. This paragraph consists of Plaintiffs' conclusion of law, and characterization of the Administrative Procedure Act and the Constitution, to which no response is required. Defendants respectfully refer the Court to the cited statute for a complete and accurate statement of its contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

152. This paragraph consists of Plaintiffs' conclusion of law, and characterization of certain agency documents, to which no response is required. Defendants respectfully refer the Court to the cited documents, for a complete and accurate statement of their contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

153. Defendants restate and incorporate, as though fully set forth herein, the responses set forth in the preceding paragraphs.

154. This paragraph consists of Plaintiffs' conclusion of law, and characterization of the Administrative Procedure Act, certain agency documents, and caselaw, to which no response is

required. Defendants respectfully refer the Court to the cited materials for a complete and accurate statement of its contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

155. This paragraph consists of Plaintiffs' conclusion of law, and characterization of certain agency documents and a statute, to which no response is required. Defendants respectfully refer the Court to the cited documents, for a complete and accurate statement of their contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

156. Defendants restate and incorporate, as though fully set forth herein, the responses set forth in the preceding paragraphs.

157. This paragraph consists of Plaintiffs' conclusion of law, and characterization of the Administrative Procedure Act. Defendants respectfully refer the Court to the cited materials for a complete and accurate statement of its contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph to the extent inconsistent with the statute.

158. This paragraph consists of a conclusion of law to which no response is required. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

159. This paragraph consists of a conclusion of law to which no response is required. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

160. This paragraph consists of a conclusion of law to which no response is required. If a response is deemed required, Defendants admit the allegations contained in this paragraph.

161. This paragraph consists of a conclusion of law, to which no response is required. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

162. This paragraph consists of a conclusion of law and characterization of a statute, to which no response is required. Defendants respectfully refer the Court to the cited statute for a complete and

accurate statement of its contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph to the extent inconsistent with the cited statute.

163. This paragraph consists of a conclusion of law to which no response is required. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

164. Defendants restate and incorporate, as though fully set forth herein, the responses set forth in the preceding paragraphs.

165. This paragraph consists of Plaintiffs' conclusion of law, and characterization of the Administrative Procedure Act. Defendants respectfully refer the Court to the cited materials for a complete and accurate statement of its contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph to the extent inconsistent with the statute.

166. This paragraph consists of Plaintiffs' conclusion of law, and characterization of certain caselaw, to which no response is required. Defendants respectfully refer the Court to the cited caselaw for a complete and accurate statement of its contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

167. This paragraph consists of Plaintiffs' conclusion of law, and characterization of certain caselaw, to which no response is required. Defendants respectfully refer the Court to the cited caselaw for a complete and accurate statement of its contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

168. Defendants admit that the EEOC Chair did not submit the EEOC Document for notice and comment. The remaining allegation in this paragraph is a conclusion of law to which no response is required. If a response is deemed required, Defendants deny the remaining allegation contained in this paragraph.

169. This paragraph consists of Plaintiffs' conclusion of law, and characterization of certain agency regulations, to which no response is required. Defendants respectfully refer the Court to the

cited regulations for a complete and accurate statement of their contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

170. This paragraph consists of Plaintiffs' conclusion of law and characterization of certain agency regulations, to which no response is required. Defendants respectfully refer the Court to the cited regulations for a complete and accurate statement of their contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

171. This paragraph consists of Plaintiffs' conclusion of law and characterization of certain agency regulations, to which no response is required. Defendants respectfully refer the Court to the cited regulations for a complete and accurate statement of their contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

172. This paragraph consists of Plaintiffs' conclusion of law and characterization of certain agency regulations, to which no response is required. Defendants respectfully refer the Court to the cited regulations and statute for a complete and accurate statement of their contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

173. Defendants restate and incorporate, as though fully set forth herein, the responses set forth in the preceding paragraphs.

174. This paragraph consists of Plaintiffs' conclusion of law, characterization of the Administrative Procedure Act, an agency document, and the Supreme Court's decision in *Bostock*, to which no response is required. Defendants respectfully refer the Court to the cited materials for a complete and accurate statement of their contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

175. This paragraph consists of Plaintiffs' conclusion of law, characterization an agency document, and the Supreme Court's decision in *Bostock*, to which no response is required. Defendants respectfully refer the Court to the cited materials for a complete and accurate statement

of their contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

176. This paragraph consists of a conclusion of law to which no response is required. If a response is deemed required, Defendant EEOC denies the allegation contained in this paragraph.

177. Defendants restate and incorporate, as though fully set forth herein, the responses set forth in the preceding paragraphs.

178. This paragraph consists of Plaintiffs' conclusion of law and characterization of the Administrative Procedure Act, to which no response is required. Defendants respectfully refer the Court to the cited statute for a complete and accurate statement of its contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

179. This paragraph consists of a conclusion of law to which no response is required. If a response is deemed required, Defendants deny the allegation contained in this paragraph.

180. Defendants restate and incorporate, as though fully set forth herein, the responses set forth in the preceding paragraphs.

181. This paragraph consists of Plaintiffs' conclusion of law and characterization of the Administrative Procedure Act, to which no response is required. Defendants respectfully refer the Court to the cited statute for a complete and accurate statement of its contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

182. This paragraph consists of Plaintiffs' conclusion of law and characterization of certain caselaw, to which no response is required. Defendants respectfully refer the Court to the cited caselaw for a complete and accurate statement of its contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph to the extent inconsistent with the caselaw.

183. This paragraph consists of a conclusion of law to which no response is required. If a response is deemed required, Defendant EEOC denies the allegation contained in this paragraph.

184. This paragraph consists of a conclusion of law to which no response is required. If a response is deemed required, Defendants deny the allegation contained in this paragraph.

185. Defendants restate and incorporate, as though fully set forth herein, the responses set forth in the preceding paragraphs.

186. This paragraph consists of Plaintiffs' conclusion of law, and characterization of the Administrative Procedure Act, an agency document, and caselaw. Defendants respectfully refer the Court to the cited materials for a complete and accurate statement of their contents. If a response is deemed required, Defendants deny the allegations contained in this paragraph.

187. This paragraph consists of a conclusion of law to which no response is required. If a response is deemed required, Defendants deny the allegation contained in this paragraph.

188. Defendants restate and incorporate, as though fully set forth herein, the responses set forth in the preceding paragraphs.

189. This paragraph consists of a conclusion of law to which no response is required. If a response is deemed required, Defendants deny the allegation contained in this paragraph.

190. This paragraph consists of a conclusion of law to which no response is required. If a response is deemed required, Defendants deny the allegation contained in this paragraph.

191. This paragraph consists of a conclusion of law to which no response is required. If a response is deemed required, Defendants deny the allegation contained in this paragraph.

192. This paragraph consists of a conclusion of law to which no response is required. If a response is deemed required, Defendants deny the allegation contained in this paragraph.

193. This paragraph consists of a conclusion of law to which no response is required. If a response is deemed required, Defendants deny the allegation contained in this paragraph.

194. This paragraph consists of a conclusion of law to which no response is required. If a response is deemed required, Defendants deny the allegation contained in this paragraph.

195. This paragraph consists of a conclusion of law to which no response is required. If a response is deemed required, Defendants deny the allegation contained in this paragraph.

196. This paragraph consists of a conclusion of law to which no response is required. If a response is deemed required, Defendants deny the allegation contained in this paragraph.

The remaining paragraphs of the Complaint set forth Plaintiffs' request for relief, to which no response is required. If a response is deemed necessary, Defendants deny that Plaintiffs are entitled to the relief requested or any relief.

Defendants deny each and every allegation of Plaintiffs' Complaint not admitted, denied, or otherwise qualified herein.

DEFENSES

1. This Court lacks subject matter jurisdiction because Plaintiffs do not have standing, and because their claims are unripe.

2. This Court lacks subject matter jurisdiction because Plaintiffs have an alternate and exclusive remedy.

3. The Complaint fails to state a claim against Defendants upon which relief may be granted.

WHEREFORE, Defendants pray that the Court dismisses Plaintiffs' Complaint with prejudice and orders Plaintiffs to bear the costs of defending this litigation.

Dated: August 15, 2022

Respectfully submitted,

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