

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MAYNARD BAKER, DOUGLAS K. IRISH, MARK
SCHUMAKER, RONALD W. DIXON, SR, RICHARD
KENNY and JOSEPH FRANKLIN,

Plaintiffs,

- against -

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION;
PETE GRANNIS, sued herein in his official
capacity as Commissioner of the New York State
Department of Environmental Conservation;
NEW YORK STATE ADIRONDACK PARK AGENCY;
CURT STILES, sued herein in his official capacity as
Chairman of the New York State Adirondack Park Agency;
DAVID PATERSON, sued herein as Governor of the
State of New York; and, STATE OF NEW YORK,

Defendants.

ANSWER

10-CV-1016
(GLS) (RFT)

Defendants, by their attorney, New York State Attorney General Andrew Cuomo,
Albany, New York, answer the complaint as follows:

Preliminary Statement

1. Refer to the complaint as the best evidence of its contents and deny that the defendants or the challenged laws, regulations, or the Adirondack Park State Land Master Plan violate the Americans With Disabilities Act (ADA), 42 U.S.C. §§ 12131-12133.

2. Refer to the complaint as the best evidence of its contents, admit that the lawsuit purports to challenge defendants' enactment, administration and enforcement of ECL § 1-0101, 3-0301, 9-0105, Exec. L. § 816 and 6 N.Y.C.R.R. §§ 190.33(a), 196.4, and 196.8, and the Adirondack Park State Land Master Plan (APSLMP), and deny that enactment, administration,

enforcement, application of, or compliance with, the cited statutes, regulations or APSLMP were unconstitutional or a violation of the Supremacy Clause of the United States Constitution.

3. Refer to the complaint as the best evidence of its contents, admit that the lawsuit purports to be, in part, a declaratory judgment action brought pursuant to U.S.C. § 2201(a), and deny that the action has any merit.

4. Refer to the complaint as the best evidence of its contents, admit that plaintiffs claim that one purpose of the lawsuit is to seek access by disabled persons to certain ponds and lakes located within the Adirondack Park, and deny knowledge or information sufficient to form a belief as to the truth of the allegation that plaintiffs seek no “new means of access to these unique, remote lakes.”

5. Refer to the complaint as the best evidence of its contents and admit that plaintiffs seek prospective injunctive relief and attorneys’ fees and costs, but deny that plaintiffs are entitled to the relief they seek.

Jurisdiction and Venue

6. Refer to the complaint as the best evidence of its contents, admit that the action purports to be premised on the Supremacy Clause, the Americans With Disabilities Act, and 49 U.S.C. §§ 40101-50205, but deny that a claim is stated under the Supremacy Clause of the United States Constitution, the Americans With Disabilities Act (ADA), or Title 49 of the United States Code, or that if any claim is stated, it has merits.

7. Refer to the complaint as the best evidence of its contents, admit that jurisdiction is alleged to exist under 28 U.S.C. §§ 1331 and 1343, and state that the question of whether jurisdiction exists under 28 U.S.C. §§ 1331 or 1343 is a question of law for the court to determine and is therefore denied.

8. Refer to the complaint as the best evidence of its contents, admit that it is alleged that plaintiffs' action for declaratory relief is authorized by 28 U.S.C. § 2201, and state that the question of whether declaratory relief is authorized under 28 U.S.C. § 2201 is a question of law for the court to determine and is therefore denied.

9. Refer to the complaint as the best evidence of its contents, admit that plaintiffs allege that their action for prospective injunctive relief is authorized by Fed. R. Civ. P. 65, 42 U.S.C. §§ 12133, 2000d-7, and 29 U.S.C. § 794a, and state that whether plaintiffs' action is authorized by Fed. R. Civ. P. 65, 42 U.S.C. §§ 12133, 2000d-7, or 29 U.S.C. § 794a is a question of law for the court to determine and is therefore denied.

10. Deny knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 10.

Parties

11. Deny knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 11.

12. Deny knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 12.

13. Deny knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 13 but state affirmatively that some water bodies in areas classified as wilderness, primitive or canoe (WPC) are accessible by motorized vehicle, including Little Tupper Lake in the William C. Whitney Wilderness Area, and other water bodies located in the following wilderness or primitive areas: Siamese Ponds, West Canada Lake, Silver Lake, Watawaska Flow/Quebec Brook and Five Ponds. Further state that float plane access to Lows Lake is permitted pursuant to a permit program through December 31, 2011.

14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 14.

15. Deny knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 15.

16. Deny knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 16.

17. Deny knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 17.

18. Deny knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 18.

19. Deny knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 19.

20. Deny knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 20.

21. Deny knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 21.

22. Deny knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 22.

23. Deny knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 23.

24. Deny knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 24.

25. Deny knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 25.

26. Deny knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 26.

27. Deny knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 27.

28. Deny knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 28.

29. Deny knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 29.

30. Deny knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 30.

31. Deny knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 31.

32. Deny knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 32.

33. Deny knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 33.

34. Deny knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 34.

35. Deny knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 35.

36. Deny knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 36.

37. Deny knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 37.

38. Deny knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 38.

39. Deny knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 39. State affirmatively that many individuals do not reach areas in the Adirondack Park, including water bodies in areas classified as WPC, “solely by means of their own ambulation.” *See id.* ¶ 39. Affirmatively state that canoes, kayaks, rowboats, and other non-motorized vessels, as well as horses, are permissible within many areas of the Park, including those areas classified wilderness, primitive or canoe. Further state that access to some lakes surrounded by or adjacent to wilderness or primitive areas is permitted by motorized vehicle, including Little Tupper Lake in the William C. Whitney Wilderness Area.

40. Deny knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 40. State affirmatively that the use of “other motorized vehicles” is vague and also subject to a different legal analysis than the access plaintiffs purportedly seek only “by float planes and float-equipped helicopters.” *See Compl.* ¶ 4. Further state that access to some lakes surrounded by or adjacent to wilderness or primitive areas is permitted by motorized vehicle, including Little Tupper Lake in the William C. Whitney Wilderness Area.

41. Admit that the New York State Department of Environmental Conservation (DEC or Department) and the Adirondack Park Agency (APA or Agency) are two entities charged with promulgating and enforcing policies, rules and regulations governing some actions of persons

within the Adirondack Park but deny that the Department or the Agency alone have such jurisdiction or that they have jurisdiction over all actions of persons within the Adirondack Park.

42. Admit, as alleged in ¶ 42, that the Agency and the Department are charged with promulgating and enforcing some policies, rules and regulations to carry out the purpose and intentions of the APSLMP.

43. As alleged in ¶ 43, deny that the Department “administer[s]” the Adirondack Park but admit that the Department has responsibility for enforcing some federal laws within the Adirondack Park, including the Clean Air Act; the Clean Water Act; the Comprehensive Environmental Response, Compensation, and Liability Act; the Resource Conservation and Recovery Act; and other federal laws relating to the environment, which have been delegated to the State. Deny that the Department has any other jurisdiction to enforce “laws of the United States.” State affirmatively that the meaning of “administer” is unclear and vague.

44. Admit the allegations in ¶ 44.

45. Deny the allegations in ¶ 45.

46. Deny the allegations in ¶ 46 State affirmatively that the meaning of “administer” is unclear and vague. Further state that the Adirondack Park is not one of the 178 State parks administered by the New York State Office of Parks, Recreation and Historic Preservation.

47. Deny the allegations in ¶ 47 but admit that DEC maintains all office for business in Albany, New York.

48. Admit the allegations in ¶ 48.

49. Deny, as alleged in ¶ 49, that the Agency “administer[s]” the Adirondack Park or that there are “laws, rules and policies of the Adirondack Park.” Admit that the Agency has the responsibility to interpret and enforce the provisions of the (a) Adirondack Park Agency Act; (b)

the New York State Freshwater Wetlands Act in geographic areas within the Park; and (c) the New York State Wild and Scenic Rivers Systems Act. State affirmatively that the meaning of “administer” is unclear and vague. State further that the Agency has no jurisdiction to enforce “laws of the United States.”

50. Admit the allegations in ¶ 50.

51. Admit the allegations in ¶ 51.

52. As alleged in ¶ 52, deny that the Agency, or its Chair, “administer[s]” the Adirondack Park or that there are “laws, rules and policies of the Adirondack Park.” Admit that the Agency has the responsibility to interpret and enforce the provisions of the (a) Adirondack Park Agency Act; (b) the New York State Freshwater Wetlands Act in geographic areas within the Park; and (c) the New York State Wild and Scenic Rivers Systems Act. State affirmatively that the meaning of “administer” is unclear and vague. State further that the Agency, and its Chair, has no jurisdiction to enforce “laws of the United States.”

53. Admit the allegations in ¶ 53.

54. Admit the allegations in ¶ 54 but deny that any “State sanctioned or created violations of the laws of the United States on the part of officers, agency and officials of the State of New York” are stated in the complaint or could be proven.

55. Admit the allegations in ¶ 55.

56. Deny the allegations in ¶ 56. State affirmatively that the Adirondack Park is not commonly understood to be a part of the “state park system,” insofar as that system means the 178 New York State parks administered by the New York State Office of Parks, Recreation and Historic Preservation.

Factual Allegations

57. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 57.

58. Deny knowledge or information sufficient to form a belief as to the truth of the allegations made in ¶ 58.

59. Admit, as alleged in ¶ 59, that some activities within the Adirondack Park are subject to the APSLMP, which is prepared by the Agency with DEC's assistance pursuant to all relevant and applicable New York State laws and regulations.

60. Admit, as alleged in ¶ 60, that Exec. L. § 802(27) defines "Land" as "the earth, on or below the surface of the ground, including water and air above the flora and fauna."

61. Admit that ¶ 61 accurately quotes the first paragraph of Exec. L. § 816, deny that it quotes the entirety of Exec. L. § 816.

62. Admit that the Department has drafted regulations governing some activities in the Catskill Park and the Adirondack Park and otherwise deny the allegations in ¶ 62. State affirmatively that the Adirondack Park is unique in the nation and in the State and is not one of the 178 "State parks" administered by the New York State Office of Parks, Recreation and Historic Preservation.

63. Admit the allegations in § 63 insofar as they apply to members of the public utilizing aircraft and with respect only as to some lakes within the Adirondack Park with shoreline in wilderness, primitive or canoe areas, and otherwise deny. State affirmatively that the term "other motorized vehicles" is vague. State further that the use of "other motorized vehicles" is subject to a different legal analysis than the access plaintiffs purportedly seek only "by float planes and float-equipped helicopters." See Compl. ¶ 4. Further state that some water

bodies surrounded by or adjacent to wilderness or primitive areas are accessible by motorized vehicle, including Little Tupper Lake in the William C. Whitney Wilderness Area. State, too, that aircraft access to Lows Lake, a lake with shoreline in the Five Ponds Wilderness Area, is allowed to the public, including plaintiffs, by permit through December 31, 2011.

64. Deny the allegation in ¶ 64.

65. Admit the allegations in ¶ 65 insofar as they apply to public use of aircraft by any person and otherwise deny. State affirmatively that “the laws, rules, regulations and policies, including 6 N.Y.C.R.R. §§190.33(2), 196.4 and 196.8 and the SLMP,” apply equally to all members of the public and do not apply only to those with alleged disabilities. State affirmatively that “public use” does not include administrative use by State employees or agents of the State and also does not include use for purposes of scientific research. State affirmatively that the term “other motorized vehicles” is vague and use of “other motorized vehicles” is subject to a different legal analysis than the access plaintiffs purportedly seek only “by float planes and float-equipped helicopters.” *See* Compl. ¶ 4. Further state that access to some lakes surrounded by or adjacent to wilderness or primitive areas is permitted by motorized vehicle, including Little Tupper Lake in the William C. Whitney Wilderness Area. State, too, that aircraft access to Lows Lake, a lake with shoreline in the Five Ponds Wilderness Area, is allowed to the public, including plaintiffs, by permit through December 31, 2011.

66. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 66 except deny that attempts by plaintiffs to access Lows Lake by aircraft before December 31, 2010 or Little Tupper Lake at any time by motorized vehicle would result in arrest, criminal prosecution, incarceration, fines, civil prosecution, or civil penalties.

67. Deny the allegations in ¶ 67 but admit that portions of the lands classified WPC have a primeval character without significant improvement or permanent human habitation with

the imprint of man's work substantially unnoticeable, and having opportunities for solitude and unconfined types of recreation. State that defendants and the APSLMP aspire to provide that character and those attributes to the remaining lands classified WPC and further state affirmatively that other areas in the Adirondack Park, subject to different classifications, also share this character and these attributes.

68. Deny the allegations in ¶ 68.

69. Deny the allegations in ¶ 69 and also state affirmatively that the plaintiffs have not sought any accommodation or modification.

70. Deny the allegations in ¶ 70 and state affirmatively that the non-emergency use of aircraft and other motorized vessels is permitted in the areas set forth in 6 N.Y.C.R.R. § 196.4(a) and (d) only in accordance with 6 N.Y.C.R.R. § 196.4(b) and (e), and, in the William C. Whitney Area, only in accordance with 6 N.Y.C.R.R. § 190.33.

71. Deny the allegations in ¶ 71 and state affirmatively that the non-emergency use of aircraft and other motorized vessels is permitted in the areas set forth in 6 N.Y.C.R.R. § 196.4(a) and (d) only in accordance with 6 N.Y.C.R.R. § 196.4(b) and (e), and, in the William C. Whitney Area, only in accordance with 6 N.Y.C.R.R. § 190.33.

72. Deny the allegations in ¶ 72 and state affirmatively that hiking and camping within the forest preserve, including areas classified as wilderness, primitive or canoe, and including areas set forth in 6 N.Y.C.R.R. § 196.4(a) and (d), are governed by regulations set forth, including 6 N.Y.C.R.R. §§ 190.3, 190.4, 190.5, 190.6, 190.7 (camping restrictions); *id.* § 190.8 (general use proscriptions, including restrictions relating to horses, snowmobiles and boats); *id.* § 190.10 (restrictions applicable to unique areas, including prohibitions on camping, motorized boats, unrestrained pets, fires, swimming, hang gliding); *id.* § 190.13 (restrictions

applicable to wilderness areas including prohibitions on audio devices, the use of soap in water bodies, motorized equipment, and glass containers except those used for prescription medications); *id.* §§ 190.23 - 190.34 (restrictions applicable to particular locations).

73. Deny the allegation in ¶ 73.

74. Deny the allegation in ¶ 74.

75. Deny the allegation in ¶ 75.

76. Deny the allegation in ¶ 76.

77. Deny the allegations in ¶ 77.

78. Deny the allegation in ¶ 78.

79. Deny the allegations in ¶ 79.

80. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 80.

81. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 81.

82. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 82.

83. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 83.

84. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in ¶ 84.

85. Deny the allegations in ¶ 85.

86. Deny the allegations in ¶ 86.

87. Deny the allegations in ¶ 87.

88. Deny the allegations in ¶ 88.

89. Deny the allegations in ¶ 89.

90. Deny the allegations in ¶ 90.

First Cause of Action
(Americans With Disabilities Act - Title II)

91. Defendants repeat and reallege their answers to ¶¶ 1-90 as if fully set forth again.

92. Admit that plaintiffs purport to bring a claim under Title II of the Americans With Disabilities Act but deny that they state a claim or that any claim stated has merit.

93. Refer to the text of 42 U.S.C. § 12132 as the best evidence of the statute's content and state that its legal meaning is a question of law for the court to determine. Deny any remaining allegation in ¶ 93.

94. Refer to the text of 42 U.S.C. § 12131(10)(a) and (3) as the best evidence of the statute's content and state that its legal meaning is a question of law for the court to determine. Deny any remaining allegation in ¶ 94.

95. Admit the allegations in ¶ 95.

96. State that the legal argument in ¶ 96 requires no denial but deny the argument and any allegation to the extent denial is required.

97. Deny the allegations in ¶ 97.

98. Deny the allegations in ¶ 98.

99. Admit the allegations in ¶ 99.

100. Deny the allegations in ¶ 100.

101. Deny the allegations in ¶ 101.

102. Deny the allegations in ¶ 102.

103. Deny the allegations in ¶ 103.

104. Deny the allegations in ¶ 104.

105. Deny the allegations in ¶ 105.

106. Deny the allegations in ¶ 106 to the extent they are not legal argument or conclusions that the court must determine.

107. Deny the allegations in ¶ 107 to the extent they are not legal argument or conclusions that the court must determine.

108. Deny the allegations in ¶ 108 to the extent they are not legal argument or conclusions that the court must determine.

Second Cause of Action
(Supremacy Clause)

109. Defendants repeat and reallege their answers to ¶¶ 1-108 as if fully set forth again.

110. Deny the allegations in ¶ 110.

111. Deny the allegations in ¶ 111.

112. Deny the allegations in ¶ 112 to the extent they do not constitute legal argument that requires no denial.

113. Deny knowledge or information sufficient to form a belief as to the accuracy of the allegations in ¶ 113.

114. Deny knowledge or information sufficient to form a belief as to the accuracy of the allegations in ¶ 114.

115. Deny knowledge or information sufficient to form a belief as to the accuracy of the allegation that aircraft once lawfully landed on lakes in areas classified as wilderness, primitive or canoe within the Adirondack Park, or classified in 6 N.Y.C.R.R. §§ 190.33(2), and 196.4, but admit that the APSLMP prohibits the public from using aircraft to take off from or land on some water bodies.

116. Deny the allegations in ¶ 116.

117. Deny the allegations in ¶ 117.

118. Deny the allegations in ¶ 118.

119. Deny the allegations in ¶ 119.

120. Deny the allegations in ¶ 120.

121. Deny the allegations in ¶ 121.

122. Deny the allegations in ¶ 122.

123. With respect to plaintiffs' prayer for relief, any assertions and allegations contained therein are prayers for relief as to which no denial is required, but to the extent one is required, deny and oppose each and every form of relief sought.

124. Every allegation of fact not specifically denied in the preceding paragraphs is denied.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

125. The Court lacks subject matter jurisdiction.

AND AS FOR A SECOND AFFIRMATIVE DEFENSE

126. The claims are not ripe.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

127. Plaintiffs have failed to state a claim upon which relief can be granted.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

128. The claims are barred by the statute of limitations.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

129. The claims are barred by stare decisis.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

130. The claims are barred by collateral estoppel.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

131. The claims are barred by res judicata.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

132. Plaintiffs lack standing.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

133. Defendants are immune from suit.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

134. The ADA does not require defendants to provide float plane, helicopter, or motorized vehicle access to lakes classified as wilderness, primitive or canoe or identified in the regulatory sections cited by plaintiffs.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

135. Defendants have provided meaningful access and reasonable modifications to persons with mobility impairment disabilities to the Adirondack Forest Preserve.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

136. The ADA does not require the defendants to provide motor vehicle access to each and every location on state-owned land but requires meaningful access to the Adirondack Park as a whole. A substantial portion of the entire Adirondack Park is accessible to the plaintiffs, including many lakes and ponds on which float planes are permitted to land and from which they are permitted to take off.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

137. Plaintiffs have not sought reasonable modification.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

138. If granted, plaintiffs' demand for relief would fundamentally alter the nature of the areas within the Adirondack Park designated as wilderness, primitive or canoe.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

139. Defendants are required to uphold and enforce the New York State Constitution, New York State statutes and regulations, and the Adirondack Park State Land Master Plan with respect to aircraft access within the Adirondack Park Forest Preserve.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

140. Plaintiffs cannot establish that they will suffer irreparable harm absent an injunction.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

141. Defendants are entitled to the benefit of the proprietor exception to any federal preemption of noise and other concerns with respect to water bodies in areas classified WPC.

WHEREFORE, defendants respectfully request an order dismissing the complaint and granting such other relief as may be just and proper.

Dated: October 22, 2010
Albany, New York

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