

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-01546-REB-CBS

THE DIRECT MARKETING ASSOCIATION,

Plaintiff,

v.

ROXY HUBER, in her capacity as Executive Director,
COLORADO DEPARTMENT OF REVENUE,

Defendant.

**DEFENDANT'S UNOPPOSED MOTION FOR EXTENSION OF TIME IN WHICH TO
REPLY IN SUPPORT OF HER MOTION TO DISMISS**

Defendant, Roxy Huber, in her official capacity as the Executive Director of the Colorado Department of Revenue, ("Director" or "Department"), through the Colorado Attorney General's Office, respectfully moves the Court for an additional extension of time in which to reply in support of her Motion to Dismiss. As grounds therefore, Defendant states as follows:

1. Pursuant to D.C.COLO.LCivR. 7.1A of the Federal Rules of Civil Procedure, counsel for Defendant conferred with counsel for Plaintiff on September 15 and 16, 2010. Plaintiff does not object to the relief requested in this motion.

2. Plaintiff brings this suit challenging the constitutionality of a new Colorado statute. Plaintiff challenges the Act's constitutionality under the Commerce Clause, the First Amendment, and on a variety of theories under the Fifth and Fourteenth Amendments.

3. Defendant moved to dismiss Plaintiff's Complaint in full [Dkt #14].

4. Since that time, the parties have extensively conferred and resolved Defendant's objections to Plaintiff's assertion of standing as to its claims under the Commerce Clause. Defendant contemporaneously files a motion to withdraw the portions of its Motion to Dismiss relating to the Commerce Clause challenges.

5. Plaintiff also has since filed a Motion for Preliminary Injunction, which is based only on its Commerce Clause claims [Dkt #15].

6. Good cause exists for extension of time for Defendant to Reply in support of the Motion to Dismiss. Because the Commerce Clause challenges are the basis for the Motion for a Preliminary Injunction and are the only claims not covered by Defendant's Motion to Dismiss, the parties worked together to craft a proposal to consolidate the Motion for Preliminary Injunction with a trial on the merits of Plaintiff's Commerce Clause claims [Dkt #27 "Defendant's Unopposed Motion 1) for Limited Expedited Discovery, 2) to Consolidate Preliminary Injunction Proceedings with a Trial on the Merits on Plaintiff's Commerce Clause Claims, 3) to Stay Proceedings on Plaintiff's Remaining Claims, and 4) in the Alternative, for an Extension of Time in which Defendant May Respond to Plaintiff's Motion for Preliminary Injunction and Reply in Support of Her Motion to Dismiss" (hereinafter "Unopposed Motion to Consolidate Proceedings")]. As part of this proposal, the parties agreed to stay further briefing on the Motion to Dismiss and to stay discovery on all of Plaintiff's remaining claims until the Commerce Clause challenge is resolved. Defendant moved the Court in the alternative that if the motion to consolidate were not granted, that the Court permit

Defendant up to September 21, 2010 in which to reply in support of her Motion to Dismiss. The Court has not yet ruled on the Unopposed Motion to Consolidate.

7. Resolution of Plaintiff's Commerce Clause claims may dispose of this action in its entirety. In order to conserve resources and permit the parties and the Court to focus on the most important issues at hand (the Commerce Clause challenges), Defendant moves the Court for an extension of time in which to complete briefing on the remainder of Plaintiff's claims (all claims other than the Commerce Clause).

8. Defendant, therefore, moves that if the Court does not grant the relief requested in the Unopposed Motion to Consolidate [Dkt #27] that she be permitted up to and including October 22, 2010 in which to reply in support of her Motion to Dismiss.

9. No trial or other deadlines have been set in this matter. Granting the requested extensions will not impact any other deadlines and will not prejudice any party.

10. As required by to D.C.COLO.LCivR. 6.1D, Defendant represents that she sought a prior extension of one week in which to respond to Plaintiff's Complaint, which was granted. Defendant also requested an extension of time in which to reply in support of her Motion to Dismiss as part of the broader Unopposed Motion to Consolidate [Dkt #27]. That motion has not yet been ruled on by the Court.

11. Pursuant to D.C.COLO.LCivR. 6.1E, counsel for Defendant certifies that a copy of this Motion has been served on Defendant at the address listed in the Certificate of Service.

WHEREFORE, Defendant requests this Court enter an Order that if the Court denies the relief requested in Defendant's Unopposed Motion to Consolidate [Dkt #27], that Defendant be permitted up to and including October 22, 2010 in which to reply in support of her Motion to Dismiss.

Respectfully submitted this 16th day of September, 2010.

JOHN W. SUTHERS
Attorney General

s/ Stephanie Lindquist Scoville

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on the 16th day of September, 2010, a copy of the foregoing DEFENDANT'S UNOPPOSED MOTION FOR EXTENSION OF TIME TO REPLY IN SUPPORT OF HER MOTION TO DISMISS was, in addition to being electronically filed with the Clerk of the Court using the CM/ECF system, sent to the following e-mail addresses via the CM/ECF system:

gissacson@brannlaw.com
mschafer@brannlaw.com

s/ Stephanie Lindquist Scoville

cc: Via inter-office mail

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