

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 NOTICE OF PARTIAL WITHDRAWAL OF 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 notifies the Court that Defendant withdraws the portion of her Motion to Dismiss contesting Plaintiff's standing to assert violations of the Commerce Clause. Defendant does not withdraw the remainder of her Motion to Dismiss. As grounds therefore, Defendant states as follows:

1. 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.

2. Defendant moved to dismiss Plaintiff's Complaint in full [Dkt #14]. Defendant's Motion to Dismiss was based on Plaintiff's lack of standing to assert claims either on behalf of its members or on behalf of its members' customers.

Defendant's Motion to Dismiss also contended that Plaintiff failed to state a claim as to all claims for relief other than those under the Commerce Clause.

3. Counsel for Defendant conferred extensively with counsel for Plaintiff over the last several weeks in an effort to resolve a number of outstanding issues, one of which was Defendant's objection to Plaintiff's standing to assert violations of the Commerce Clause.

4. The parties resolved Defendant's objections to Plaintiff's assertion of standing as to its claims under the Commerce Clause. Plaintiff agreed to provide a sworn declaration from an individual with personal knowledge in order to establish that at least one member of the DMA is subject to the notice and reporting requirements of the Act and Regulations.

5. Upon receipt of such a declaration, Defendant agreed not to contest the DMA's standing to assert its Commerce Clause claims and to file a motion withdrawing that portion of her pending Motion to Dismiss.

6. Defendant reserves her right to contest the Plaintiff's associational standing as to any remaining claims, as well as to contest Plaintiff's *jus tertii* standing.

7. Defendant, therefore, withdraws that portion of her Motion to Dismiss contesting Plaintiff's standing to assert claims under the Commerce Clause. See Defendant's Motion to Dismiss, pp.6-10. Defendant, however, does not withdraw this argument as to Plaintiff's remaining claims and does not withdraw the remainder 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 NOTICE OF PARTIAL WITHDRAWAL OF 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
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s/ Stephanie Lindquist Scoville
