

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 TO RESPOND
TO PLAINTIFF'S COMPLAINT AND FOR LEAVE TO EXCEED PAGE LIMITATION**

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 a short extension of time in which to respond to Plaintiff's Complaint and for leave to exceed the Court's page limitation for motions. 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. Plaintiff does not object to the relief requested in this motion.
2. Plaintiff brings this suit challenging the constitutionality of a new Colorado statute, which imposes reporting requirements on retailers who do not otherwise collect Colorado sales tax. The new law, House Bill 10-1193 ("the Act"), requires such retailers to inform purchasers of their obligation to pay Colorado use tax

and requires such retailers to make annual reports to the Colorado Department of Revenue (DOR). The annual reports to DOR consist of the customers' names and amounts of purchase. The Act does not require, and in fact, forbids, the reporting of items purchased by customers. 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. Plaintiff also challenges the Act under the Colorado Constitution. Plaintiff purports to bring the suit on behalf of not only the association, but also the association's member-retailers, and the retailers' customers.

3. Defendant's response to the Complaint in this case currently is due July 23rd, 2010. Defendant intends to file a motion to dismiss the case in full.

4. Defendant's request for an extension is subject to D.C.COLO.LCivR. 6.1A of the Federal Rules of Civil Procedure, which provides for one stipulation for an extension of time of no more than 21 days to respond to a complaint.

5. Good cause exists for both a short extension of time in which to respond and for a finite extension of this Court's page limitation for motions.

6. The Complaint itself exceeds thirty pages and contains eight different theories of relief. Plaintiff's claims raise significant issues of state and federal law, as well as novel constitutional issues of first impression. In addition, the Complaint raises complex issues of *jus tertii* standing and of the State's sovereign immunity.

7. Because the Complaint raises many novel constitutional issues, Defendant anticipates this will be an action that will be closely followed by many other

states and parties.

8. Given the significance and complexity of the legal issues, Defendant requests a one-week extension of time to respond to the Complaint, up to and including July 30, 2010.

9. For the same reasons, Defendant requests leave to exceed the page limitations for motions set forth in this Court's Practice Standards for Civil Actions and to file a Motion to Dismiss that is no more than 40 pages in length.

10. Counsel for Defendant will continue to edit the motion and will make every attempt to ensure that the final work product is concise and focused on dispositive arguments.

11. 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.

12. As required by D.C.COLO.LCivR. 6.1D, Defendant represents that she has not sought any prior extensions.

13. 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 granting Defendant

up to and including July 30, 2010 in which to respond to Plaintiff's Complaint and leave to file a Motion to Dismiss not to exceed 40 pages.

Respectfully submitted this 20th day of July, 2010.

JOHN W. SUTHERS
Attorney General

s/ Stephanie Lindquist Scoville

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CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2010, I electronically filed the foregoing **DEFENDANT'S MOTION FOR EXTENSION OF TIME IN WHICH TO PLAINTIFF'S COMPLAINT AND FOR LEAVE TO EXCEED THE PAGE LIMITATION** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following e-addresses:

gissacson@brannlaw.com
mschafer@brannlaw.com

Attorney for Plaintiff

and I hereby certify that I have mailed or served the document of paper to the following non CM/ECF participants in the manner (mail, hand-delivery, etc.) indicated by the non-participant's name:

Ms. Roxy Huber
Executive Director
Colorado Department of Revenue
1375 Sherman Street
Denver, Colorado 80261

Defendant

s/ Stephanie Lindquist Scoville
