

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF HUGHES)

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

AMERICAN CATALOG MAILERS)
ASSOCIATION & NETCHOICE,)

32CIV16-96

Plaintiffs,)

v.)

ANSWER
OF

ANDY GERLACH, in his capacity as the)
Secretary of the South Dakota)
Department of Revenue,)

THE SOUTH DAKOTA DEPARTMENT
OF REVENUE

Defendant.)

COMES NOW Andy Gerlach, Secretary of the South Dakota Department of Revenue (“the Department”), by and through its undersigned counsel, and for its separate Answer to the Complaint for Declaratory Judgment (“Complaint”) states as follows:

- a. The Court lacks jurisdiction to grant the relief sought.
- b. Plaintiffs’ Complaint fails to state a cause of action upon which relief may be granted against the Department; and
- c. The Department denies each any every allegation, matter, and thing contained in the Complaint, except as is hereinafter specifically admitted.

The paragraph numbers below correspond with the numbered paragraphs in Plaintiffs’ Complaint.

NATURE OF THE ACTION

1. This paragraph recites legal conclusions that do not require an answer. To the extent it contains any allegations beyond legal analysis, the Department denies them.

2. The Department admits that the American Catalog Mailers Association is a trade association representing catalog marketing interests.

3. The Department admits that NetChoice is an Internet trade association representing certain e-Commerce interests.

4. The Department admits that Andy Gerlach is the Secretary of the South Dakota Department of Revenue and charged with enforcing SB 106.

JURISDICTION AND VENUE

5. This paragraph recites a legal conclusion that does not require an answer. To the extent an answer is required, the Department denies that the Court has jurisdiction over this matter.

6. This paragraph recites a legal conclusion that does not require an answer. To the extent an answer is required, the Department agrees that venue in this Court would be proper if the Court had subject matter jurisdiction.

ALLEGATIONS

7. This paragraph recites legal conclusions that do not require an answer. To the extent it contains any allegations beyond legal analysis, the Department denies them.

8. This paragraph recites legal conclusions that do not require an answer. To the extent it contains any allegations beyond legal analysis, the Department denies them.

9. This paragraph recites legal conclusions that do not require an answer. To the extent it contains any allegations beyond legal analysis, the Department denies them.

10. This paragraph recites legal conclusions that do not require an answer. To the extent it contains any allegations beyond legal analysis, the Department denies them.

11. The Department admits that Governor Dennis Daugaard signed SB 106 on March 22, 2016.

12. This paragraph is a quotation and/or paraphrase from SB 106 and requires no response. The statutory text speaks for itself.

13. The Department admits that SB 106 took effect on May 1, 2016.

14. The Department is without sufficient knowledge to admit or deny the allegations of the paragraph.

15. The Department admits that on or about March 25, 2016, the Department sent notices to select businesses informing them about SB 106, its effects, and requirements.

16. The Department admits that SB 106 contains legislative findings, which text speaks for itself.

17. The Department admits that SB 106 contains legislative findings, which text speaks for itself.

18. This paragraph recites legal conclusions that do not require an answer. To the extent it contains any allegations beyond legal analysis, the Department denies them.

COUNT I

Declaratory Judgment

19. Plaintiffs assert a statement to which no response is necessary.
20. This paragraph asserts a legal statement that does not require an answer.
21. This paragraph asserts a legal statement that does not require an answer.
22. This paragraph asserts a legal statement that does not require an answer.
23. This paragraph asserts a legal statement that does not require an answer.
24. This paragraph asserts a legal statement that does not require an answer.
25. This paragraph asserts a legal statement that does not require an answer.

COUNT II

Declaratory Judgment

26. Plaintiffs assert a statement to which not response is necessary.
27. This paragraph asserts a legal statement that does not require an answer.
28. This paragraph asserts a legal statement that does not require an answer.
29. This paragraph asserts a legal statement that does not require an answer.

30. This paragraph asserts a legal statement that does not require an answer.

31. This paragraph asserts a legal statement that does not require an answer.

AFFIRMATIVE DEFENSES

1. The Court lacks jurisdiction to adjudicate this matter because Plaintiffs have not sufficiently alleged associational standing.

2. The Court lacks jurisdiction to adjudicate this matter because Plaintiffs have not sufficiently alleged the basic requirements of standing, including any concrete, redressable injury experienced by either Plaintiff or any one of their members.

3. The Court lacks jurisdiction to adjudicate this matter because it is not ripe.

4. The Court lacks jurisdiction because the Department is immune from this suit, which seeks, among other things, an award of attorneys' fees against the Department.

5. The relief of declaratory judgment against the Department is legally unavailable or should not be granted in this case because an adequate remedy exists for all of Plaintiffs' members at law.

6. The Complaint fails to state a claim for which relief can be granted.

7. SB 106 precludes all or a portion of the relief sought.

PRAYER FOR RELIEF

WHEREFORE, the Department respectfully prays that the Court enter relief as follows:

1. For judgment in favor of the Department and against Plaintiffs on all issues.
2. For the Department's costs, including reasonable attorneys' fees as allowed by law.
3. For such other and further relief as the Court deems just and equitable.

DATED: June 24, 2016.

**MARTY J. JACKLEY
ATTORNEY GENERAL**

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Answer of the South Dakota Department of Revenue was served electronically through the Odyssey File and Serve system, upon the following this 27th day of June 2016:

Jeffery L. Bratkiewicz at jeffb@bangsmccullen.com

and sent by email to:

George S. Isaacson at gisaacson@brannlaw.com

Mastthew P. Schaefer at mschaefer@brannlaw.com

/s/ Kirsten E. Jasper

Kirsten E. Jasper

Assistant Attorney General