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Attorneys for Plaintiffs, American Catalog
Mailers Association and NetChoice

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
WITHIN AND FOR THE COUNTY OF LARAMIE WYOMING**

AMERICAN CATALOG MAILERS)
ASSOCIATION and NETCHOICE,)
)
Plaintiffs,)
)
v.)
)
DAN NOBLE, in his capacity as the)
Director of the Wyoming Department)
of Revenue,)
)
Defendant.)

Civil Action No. 188-137

FILED

JUN 28 2017

**DIANE SANCHEZ
CLERK OF THE DISTRICT COURT**

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiffs American Catalog Mailers Association (“ACMA”) and NetChoice (together, the “Plaintiffs”) allege the following in support of their Complaint for Declaratory Judgment, which seeks a prospective declaration of rights and obligations under a statute in accordance with the Uniform Declaratory Judgments Act, W.S. 1977 § 1-37-103:

NATURE OF THE ACTION

1. This is an action for declaratory judgment by the ACMA and NetChoice challenging the constitutionality of Chapter 85 House Bill No. 19, enacted at WYO. STAT. § 39-15-501, that was adopted by the legislature with the express understanding that its terms contradict the United States Supreme Court’s decision in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), regarding the limitations on state taxing power under the Commerce Clause of the United States Constitution. The Supreme Court in *Quill* held that a State lacks the authority under the Commerce Clause to impose state sales and use tax

collection and reporting obligations upon a seller that has no physical presence in the state, either directly or through third parties, and whose only connection with the state is communicating with customers via the instrumentalities of interstate commerce, *i.e.*, telephone, U.S. mail, common carrier, and now the Internet. *See Quill Corp.*, 504 U.S. at 313-19. The new statute, WYO. STAT. § 39-15-501, imposes the obligation to report Wyoming sales tax expressly upon sellers and service providers that have no physical presence in the state, based solely on making sales over certain minimum thresholds to Wyoming customers via telephone, mail order, email, and the Internet. Because WYO. STAT. § 39-15-501 violates the *Quill* physical presence requirement, usurps the role of Congress in regulating interstate commerce, and unlawfully expands the State's taxing authority over companies, individuals, and organizations located throughout in the United States, and potentially the world, based solely on their having customers in Wyoming, the law is plainly unconstitutional.

THE PARTIES

2. Plaintiff American Catalog Mailers Association is incorporated in Washington, D.C. and is the leading trade association in the United States representing the interests of companies, individuals, and organizations engaged in and supporting catalog marketing.
3. Plaintiff NetChoice is incorporated in Washington, D.C., and is a leading trade association of Internet companies and organizations dedicated to advancing the interests of eCommerce businesses and online consumers.
4. Defendant Dan Noble is the Director of the Wyoming Department of Revenue ("Department") and is charged with the enforcement of WYO. STAT. § 39-15-501.

JURISDICTION AND VENUE

5. The Court has jurisdiction over this action pursuant to the Wyoming Uniform Declaratory Judgments Act, W.S. 1977 § 1-37-101 *et seq.* and 42 U.S.C. § 1983.
6. Venue is proper in this district under W.S. 1977 § 1-5-104 and/or W.S. 1977 § 1-5-108, because the Defendant has a sales tax office in this district.

STANDING

7. The ACMA and NetChoice each have standing to bring this complaint on behalf of their members who are affected by WYO. STAT. § 39-15-501.
8. The ACMA and NetChoice each have at least one member that would be required to register, collect, and remit Wyoming sales and use tax under WYO. STAT. § 39-15-501, despite the fact that the affected member(s) lack any physical presence in Wyoming.
9. Protecting their members from state statutes that violate constitutional protections is an interest germane to the purpose of both the ACMA and NetChoice.
10. The ACMA and NetChoice challenge WYO. STAT. § 39-15-501 as unconstitutional, on its face. Neither the claims they assert on behalf of their respective members, nor the declaratory relief they seek on behalf of their respective members, requires the participation of individual members in this lawsuit.

FACTUAL ALLEGATIONS

11. The United States Supreme Court, in *Quill*, held that sellers “who do no more than communicate with customers in the State by mail or common carrier as a part of a general interstate business” lack the necessary “substantial nexus” with a State for the State to require such out-of-state sellers to collect and remit the State’s sales and use taxes. 504 U.S. at 307, 313-319.
12. The Court in *Quill* reaffirmed that in order for a State to have the authority under the “substantial nexus” standard of the Commerce Clause to require an out-of-state seller to collect or report the State’s sales and use taxes, the seller must have a “physical presence” in the state. *Id.* at 314, 317-18.
13. The United States Supreme Court has not overruled, superseded, or limited its decision in *Quill*.
14. The physical presence requirement of *Quill* currently remains the law of the land under the United States Constitution. The States, including Wyoming, are bound by *Quill*.
15. On March 6, 2017, Governor Mead signed into law WYO. STAT. § 39-15-501.
16. WYO. STAT. § 39-15-501 provides that “any seller of tangible personal property, admissions or services which are subject to taxation under Chapter 14 or 15 of this title who does not have a physical presence in this state” is required to remit sales tax once the seller meets either of two, alternative criteria in the current or immediately preceding

calendar year: (i) the seller's gross revenue from the sale of tangible personal property, admissions or services delivered into Wyoming exceeds one hundred thousand dollars (\$100,000); or (ii) the seller sold tangible personal property, admissions or services delivered into Wyoming in two hundred (200) or more separate transactions. WYO. STAT. § 39-15-501(a).

17. WYO. STAT. § 39-15-501 takes effect on July 1, 2017.
18. Both ACMA and NetChoice have members who are directly and adversely affected by the sales tax reporting obligations imposed under WYO. STAT. § 39-15-501.
19. WYO. STAT. § 39-15-501 is modelled after a South Dakota statute that includes substantially identical provisions purporting to require sales tax collection by out-of-state retailers that have no physical presence in the State.
20. The South Dakota statute was declared unlawful and its enforcement enjoined by the South Dakota Circuit Court by order dated March 6, 2017.
21. On April 26, 2017, counsel for the Plaintiffs wrote to the Defendant, Director Noble, alerting him to the Plaintiffs' position that WYO. STAT. § 39-15-501 is unconstitutional.
22. Plaintiffs' counsel further noted that litigation presenting the identical federal constitutional issues is now before the South Dakota Supreme Court on a "fast track" schedule with the express understanding that the State of South Dakota will seek review by the United States Supreme Court. Plaintiffs' counsel invited Director Noble to suspend enforcement of WYO. STAT. § 39-15-501 pending resolution of the South Dakota appeal. Director Noble, through counsel, declined voluntarily to suspend enforcement of WYO. STAT. § 39-15-501.

COUNT I – Declaratory Judgment and 42 U.S.C. § 1983
Violation of the Commerce Clause of the United States Constitution

23. Plaintiffs incorporate the allegations of paragraphs 1–22 as if fully set forth herein.
24. *Quill* bars a State from requiring sales and use tax collection and reporting by an out-of-state seller or service provider that has no physical presence in the state.
25. WYO. STAT. § 39-15-501 expressly requires out-of-state catalog merchants, Internet sellers, and service providers "who do[] not have a physical presence in the state" to report Wyoming sales taxes.
26. WYO. STAT. § 39-15-501, on its face, violates the Commerce Clause under *Quill*.

27. The Defendant is the state official charged with, and liable for, the enforcement of WYO. STAT. § 39-15-501.
28. This Court is empowered under the Uniform Declaratory Judgments Act, W.S. 1977 § 1-37-101 *et seq.*, to declare the rights and obligations of the parties under WYO. STAT. § 39-15-501.
29. This Court is bound to follow and enforce Supreme Court precedent.
30. This Court should declare WYO. STAT. § 39-15-501 unconstitutional and unenforceable and award such further relief as is just and proper.

COUNT II – Declaratory Judgment and 42 U.S.C. § 1983
Violation of the Due Process Clause of the United States Constitution

31. Plaintiffs incorporate the allegations of paragraphs 1–30 as if fully set forth herein.
32. The Due Process Clause of the United States Constitution, made applicable to the States through the Fourteenth Amendment, requires a definite link and a minimum connection between the state and a person it seeks to tax.
33. The Supreme Court has not determined whether, for purposes of the Due Process Clause, the prescriptive jurisdiction of a state, *i.e.*, its jurisdiction to impose tax or regulatory obligations, is co-extensive with the state’s adjudicative jurisdiction.
34. The minimum thresholds in WYO. STAT. § 39-15-501 for asserting prescriptive jurisdiction over sellers that have no physical presence in the state are inconsistent with the requirements of the Due Process Clause.
35. The Defendant is the state official charged with, and liable for, the enforcement of WYO. STAT. § 39-15-501.
36. This Court is empowered under the Uniform Declaratory Judgments Act, W.S. 1977 § 1-37-101 *et seq.*, to declare the rights and obligations of the parties under WYO. STAT. § 39-15-501.
37. This Court should declare WYO. STAT. § 39-15-501 unconstitutional under the Due Process Clause and award such further relief as is just and proper.

WHEREFORE, Plaintiffs respectfully pray that the Court:

- (A) Enter a declaration that WYO. STAT. § 39-15-501 is unconstitutional and unenforceable on its face;
- (B) Enter judgment for the Plaintiffs;
- (C) Enjoin the enforcement of WYO. STAT. § 39-15-501;

- (D) Award the Plaintiffs their attorneys' fees and costs; and
- (E) Grant such further relief as the Court deems just and proper.

DATED this 28th day of June, 2017.

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