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Netflix, Hulu Beat Reno's Bid to Tax Streaming at Ninth Circuit.

Netflix Inc. and Hulu LLC beat another proposed class action alleging municipalities can tax streaming services, as the Ninth Circuit ruled against an effort by the city of Reno, Nevada.

Nevada's Video Service Law allows local governments to impose franchise fees that don't exceed 5% of a video service provider's gross annual revenue from subscribers within the jurisdiction. It doesn't expressly provide a right of action for those localities to recover underpayment of the fees, though; it only allows the attorney general to file such a suit.

The US Court of Appeals for the Ninth Circuit rejected Reno's argument that the act creates an implied right of action. "In vesting enforcement of the VSL in state agencies, the Legislature seems to have deprived local governments of enforcement powers intentionally," the court [ruled](#) in an unsigned opinion Friday.

The court also rejected Reno's argument that the federal Declaratory Judgment Act gives it the right to sue, finding Reno can't use the act to obtain affirmative relief when it lacks a cause of action under a separate statute.

The suit is one of [more than a dozen class actions](#) going after streaming services playing out across the country. Several municipalities saw early victories as state courts ruled their cases shouldn't be sent to federal court. But since then courts in at least eight states have dismissed cases after finding the broadband and cable laws relied on by the localities don't apply to services like Netflix and Hulu, or don't give the localities a basis to sue.

Judges Susan P. Graber, Michelle T. Friedland, and Lucy H. Koh joined the opinion.

Jason H. Kim of Schneider Wallace Cottrell Konecky LLP, who argued the case for Reno, Robert C. Collins of Latham & Watkins LLP, who argued for Netflix, and Victor Jih of Wilson Sonsini Goodrich & Rosati, who argued for Hulu, didn't immediately respond to requests for comment.

The case is *Reno v. Netflix, Inc.*, 9th Cir., No. 21-16560, 10/28/22.

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