

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. _____

LIGGETT GROUP LLC, VECTOR TOBACCO
INC., and XCALIBER INTERNATIONAL LTD.,
LLC,

Plaintiffs,

v.

STATE OF COLORADO, by and through JARED S.
POLIS, in his official capacity as Governor of
Colorado, PHILIP J. WEISER, in his official capacity
as Attorney General of Colorado, and the
LEGISLATIVE COUNCIL of the COLORADO
GENERAL ASSEMBLY,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. PRELIMINARY STATEMENT

1. Plaintiffs Liggett Group LLC (“Liggett”), Vector Tobacco Inc. (“Vector”), and Xcaliber International Ltd., LLC (“Xcaliber”), three out-of-state discount cigarette manufacturers, bring this action to challenge as unconstitutional a provision mandating a minimum retail price for cigarettes sold in Colorado, which is contained in Colorado House Bill 20-1427 (the “Bill”), a bill increasing taxes on cigarettes sold in Colorado. Not only is that fixed minimum price provision – Section 10 of the Bill – unconstitutional under, among other things, the Commerce Clause of the U.S. Constitution, it was rushed through the Colorado General Assembly and presented to the voters without complying with Colorado’s constitutional requirements.

2. The Bill, a legislative ballot referral, would impose hundreds of millions of dollars in new and increased taxes on cigarettes and other nicotine products.¹ Section 10 of the Bill, which establishes a minimum price for all cigarettes, was added to the Bill in a “back-room” deal to ensure that Philip Morris USA, Inc. (“Philip Morris”), by far the largest premium cigarette manufacturer in the country, would not spend millions of dollars to defeat the Bill, as it had successfully done with previous cigarette tax bills in Colorado. Philip Morris wanted Section 10 added to the Bill because it would severely damage the ability of discount cigarette manufacturers to compete with Philip Morris and would solidify Philip Morris’s market dominance in Colorado.

3. Section 10 thus imposes a patently anti-competitive fixed minimum price for all cigarettes sold in Colorado, and directly and without justification harms interstate commerce. Unlike other portions of the Bill, Section 10 is not a tax but a unique method employed by the State to inflate cigarette prices artificially. Section 10 benefits Philip Morris and other premium cigarette manufacturers at the expense of Plaintiffs by fixing the retail price of all cigarettes sold in Colorado at premium price levels, thereby eliminating by fiat price competition by Plaintiffs and other discount tobacco manufacturers, and benefitting in-state retailers, who get to pocket the price increase, at the expense of out-of-state discount manufacturers. By contrast, all other states which have raised cigarette prices without utilizing an excise tax have done so not by fixing an artificial minimum price benefitting one segment of the market over another, or by favoring in-state interests over out-of-state interests, but rather by increasing all manufacturers’ prices by a

¹ A copy of the Bill is attached hereto as Exhibit A.

fixed percentage, thus raising prices for everyone proportionally while preserving market competition.

4. Crucially, Section 10 will benefit not only Philip Morris, but also in-state retailers, who will collect and keep a significant portion of the additional proceeds resulting from the state-imposed minimum retail price of discount cigarettes, and thus be able to sell fewer discount cigarettes at higher profit margins. This comes at the expense of Plaintiffs and other out-of-state discount cigarette manufacturers, who, as a result of Section 10, will lose sales, profits, and market share. Section 10 also creates regressive and patently unfair burdens on Colorado consumers by imposing much higher costs on those who smoke discount brand cigarettes, typically price-sensitive older and lower income people. Section 10 will cost the discount brand smoker as much as \$800 per year, more than twice as much as premium brand users, many of whom will see no price increase.

5. Section 10 violates the Commerce Clause because it discriminates against out-of-state discount cigarette manufacturers in favor of in-state retailers, imposes an undue burden on interstate commerce by, among other things, interfering with the interstate sale of cigarettes, and causes negative extraterritorial effects on the cigarette market outside of Colorado. It violates the Due Process Clause because, without any legitimate justification, it deprives Plaintiffs of protected property interests.

6. Section 10 is void also because it was passed by the Colorado General Assembly in violation of procedural and substantive requirements of Colorado's Constitution, including, among others, requirements for full and fair debate in legislative committees and the General Assembly before passage. The Bill was rushed through the legislative process in this fashion in

the last four days of the 2020 legislative session, plainly to avoid opposition by the Plaintiffs and the other parties who would have been able to point out the patent constitutional and other injustices of the Bill. As many legislators commented on the record, they were not given copies of the Bill in advance, as required by Colorado law, and did not even have an opportunity to read it. And, because the Bill concerns taxes, it must, under the Colorado Constitution, be approved directly by the voters and is slated to be on the November 2020 ballot (“Proposition EE”). However, in violation of the Colorado Constitution, neither the title of the Bill nor the ballot question identifies Section 10 or its contents, thus failing to inform voters that the price of cigarettes will be artificially fixed at premium prices if Proposition EE is approved.

7. Accordingly, Plaintiffs seek preliminary and permanent injunctive relief precluding the enforcement of Section 10.

II. JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1367 because the matter in controversy arises under the laws and Constitution of the United States.

9. This Court is authorized to issue the requested declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202, 42 U.S.C. § 1983, and Rule 65 of the Federal Rules of Civil Procedure.

10. Venue is proper in this Court under 28 U.S.C. § 1391(b) because the State of Colorado is a Defendant, and all other Defendants either reside in or perform their official duties in this judicial district, and because a substantial part of the events giving rise to this action occurred in this judicial district.

III. PARTIES

11. Plaintiff Liggett Group LLC (“Liggett”) is a Delaware limited liability company, with its principal place of business in Mebane, North Carolina. Liggett and its predecessors in interest have been engaged in the business of manufacturing cigarettes for over 120 years. Liggett sells its products throughout the United States and in the State of Colorado through a network of distributors and retailers.

12. Plaintiff Vector Tobacco Inc. (“Vector”) is a Virginia corporation, with its principal place of business in Morrisville, North Carolina. Vector is in the business of manufacturing cigarettes and sells its products throughout the United States and in the State of Colorado through a network of distributors and retailers. Liggett and Vector are both indirectly owned by Vector Group Ltd.

13. Plaintiff Xcaliber International Ltd., LLC (“Xcaliber”) is an Oklahoma limited liability company, with its principal place of business in Pryor, Oklahoma. Xcaliber is in the business of manufacturing cigarettes and sells its products throughout the United States and in the State of Colorado through a network of distributors and retailers.

14. Defendant State of Colorado (the “State” or “Colorado”), operating through legislative and executive action, adopted the Bill, which includes statutory mandates forbidden by the laws of Colorado and the United States. Defendant State of Colorado has acted through its officers, agents and duly elected representatives, including Defendants Jared S. Polis, as Governor of Colorado, Paul Weiser, as Attorney General of Colorado, and the Legislative Council, among others, to injure the Plaintiffs’ constitutional rights and other rights protected under the laws of Colorado and the United States.

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