

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

JENNIFER ANN SMITH, a citizen and
taxpayer of the State of Colorado,
LIGGETT GROUP LLC, VECTOR
TOBACCO INC., and XCALIBER
INTERNATIONAL LTD., LLC,

Plaintiffs-Appellants,

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 HEIDI
HUMPHREYS, in her official capacity as
Interim Executive Director of the Colorado
Department of Revenue,

Defendants-Appellees.

No. 20-1454

On Appeal from the United States District Court
For the District of Colorado

The Honorable Raymond P. Moore, District Court Judge
D.C. No. 1:20-cv-03107-RM-KLM

MOTION TO EXPEDITE APPEAL

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Ltd., LLC*

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, counsel for Appellants state the following:

Liggett Group LLC and Vector Tobacco Inc. are wholly-owned subsidiaries of VGR Holding LLC, with the ultimate parent of these entities being Vector Group Ltd, which is a publicly traded company.

Xcaliber International Ltd., LLC has no parent corporations, and no publicly held corporation owns more than 10% of it.

s/ Maria Gorecki
Maria Gorecki

*Attorney for Plaintiffs-Appellants
Jennifer Ann Smith, Liggett Group
LLC, Vector Tobacco, Inc., and
Xcaliber International Ltd., LLC*

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Plaintiffs-Appellants Jennifer Ann Smith (“Smith”) and Liggett Group LLC, Vector Tobacco Inc., and Xcaliber International Ltd., LLC (together, the “Manufacturers”) move pursuant to Federal Rules of Appellate Procedure 2 and 27 and 10th Circuit Rule 2.1 for expedited briefing, oral argument, and consideration of the merits of this appeal.

Upon conferral under 10th Circuit Rule 27.1, counsel for Defendants-Appellees 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 Heidi Humphreys, in her official capacity as Interim Executive Director of the Colorado Department of Revenue, (collectively, the “State”) state that they oppose this appeal and any attempt to expedite it.

BACKGROUND

Smith, a Colorado citizen and voter, and Liggett Group LLC, Vector Tobacco Inc., and Xcaliber International Ltd., LLC, three discount cigarette manufacturers located outside Colorado, have appealed from the December 28, 2020 order of the U.S. District Court for the District of Colorado denying their motion for a preliminary injunction to enjoin the State of Colorado from implementing and enforcing a recently enacted statutory provision.

Colorado House Bill 20-1427 (the “Bill” or “Proposition EE”), a bill increasing taxes on cigarettes sold in Colorado, was put on the November 2020

ballot for Colorado voters as Proposition EE. Pursuant to Section 10 of the Bill, for the first time in Colorado history, Colorado will set a minimum retail price for cigarettes sold in the state.

Smith and the Manufacturers brought this action in the U.S. District Court for the District of Colorado on October 15, 2020, seeking declaratory and injunctive relief on the grounds that enforcement of Section 10 would violate the Commerce Clause of the U.S. Constitution by unduly burdening interstate commerce and favoring Colorado in-state economic interests over out-of-state discount manufacturers. (Compl., Dist. Ct. Dkt. No. 1; Am. Compl., Dist. Ct. Dkt. No. 11.)

On November 3, 2020, Colorado voters approved Proposition EE. (*See* Order, Dist. Ct. Dkt. No. 73, at 1.) On November 18, 2020, Smith and the Manufacturers moved for a preliminary injunction, seeking to enjoin the State from implementing and enforcing Section 10. (Dist. Ct. Dkt. No. 13.)

The District Court expedited briefing and, on December 21, 2020, held a preliminary injunction hearing. (Dist. Ct. Dkt. No. 19.)

Smith and the Manufacturers offered evidence that unless enforcement of Section 10 were enjoined, the Manufacturers would lose millions of dollars of annual sales and profits of their discount cigarettes in Colorado, as well as customers, market share, and good will it took them years to establish, and Smith

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