

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
2 IN AND FOR THE COUNTY OF FRANKLIN
3 COURTROOM #3 HON. BRUCE A. SPANNER, JUDGE

4 DANA HENNE, an individual taxpayer)
5 and Washington resident; 1/2 PRICE)
6 SMOKES, INC., a Washington)
7 corporation; and RYO MACHINE, LLC,)
8 an Ohio limited liability company,)
9)
10 Plaintiffs,)
11)
12 vs.) NO. 12-2-50512-1
13)
14)
15)
16)
17)
18) TRANSCRIPT OF THE VERBATIM
19) REPORT OF PROCEEDINGS
20)
21)
22 APPEARANCES:
23 For the Plaintiffs: CHRISTOPHER NELSON WEISS
24 Attorney at Law
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APPEARANCES CONTINUED:

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Reported by:

RENEE L. MUÑOZ, CCR, RPR, CRR

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2 Pasco, Washington

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4 (Whereupon the following is a specifically requested
5 portion in the above-entitled case, the COURT'S ORAL
6 RULING, and does not represent a transcript of the entire
7 matter heard on the record in open court.)

8

9 THE COURT: I do find that this is a new tax.

10 The principle reason is if you look at the statute prior
11 to the amendment, it not only defined the tax but also
12 included a methodology for its collection, and here that
13 the brand new methodology is taxing the components of the
14 roll-your-own cigarettes.

15 So, if you look at the overall scheme here, coupled
16 with the evidence of how the Executive Branch and the
17 Legislative Branch viewed it, coupled with the absence of
18 or a lack of taxing of the roll-your-own cigarettes, I
19 find it's a new tax.

20 I also find that obviously the plaintiffs here
21 have -- none of them have paid the tax because it has not
22 gone into affect. Therefore, they need to show that
23 there is a constitutional violation. I'll concur with
24 the plaintiffs that for a tax to pass constitutional
25 muster, the tax must be enacted "pursuance of law."

1 I did independent research and reviewed 30 cases
2 that analyzed that or applied that phrase, and it appears
3 to me the tax enactments must be consistent with other
4 legislative enactments and must be not be outside of the
5 authority of the taxing agency in order to comply with
6 that.

7 The other legislative enactment is Initiative 1053.
8 That requires a two thirds majority for the new tax. I
9 disagree with the State on the application of the
10 Enrolled Bill doctrine. In the case of Brown versus
11 Owens -- I think Brown versus Owens is limited to the
12 situation of court involvement during the legislative
13 process, but once the legislature purports to sign off on
14 a bill then it is subject to court scrutiny, which is
15 what we're doing here today.

16 I find that the plaintiffs must demonstrate a
17 well-founded fear of immediate invasion of a right.
18 Well, as citizens we have a right to insist that our
19 legislature acts in a constitutionally consistent manner.
20 Whenever they don't, a citizen's right is thereby
21 invaded.

22 In terms of the injury, I concur with the State.
23 The requirement that a taxpayer have to pay this action
24 is not, in and of itself, a substantial injury, but here
25 we have a niche business that was created based upon a

1 certain tax structure. That without that -- until and
2 unless that tax structure is legitimately changed, these
3 businesses simply would not exist.

4 They, therefore, have suffered an actual and
5 substantial injury in the form of essentially the demise
6 or near demise of the business. Balancing the equities
7 between a business owner who is legitimately invested in
8 a business and the State that attempts to enforce an
9 unconstitutional tax, the equities weigh in favor of the
10 citizens, not the State.

11 Therefore, I am granting the restraining order, but
12 we do need security. I had initially thought 12 million
13 dollars. That is, the annual projected revenues would be
14 appropriate, but counsel corrected my thinking there
15 perhaps. If the thing -- no, even if it's upheld then
16 the revenues go down. I think a bond in the amount of
17 \$200,000.00 would be appropriate for security. It does
18 not necessarily have to be a bond. Cash deposit or a
19 bond.

20 Now, the temporary restraining order does not go
21 into affect until the bond has been posted. Any order
22 must so reflect so that there's no confusion as to when,
23 if, this order goes into affect.

24 MR. WEISS: For point of clarification, your
25 Honor, is there a preliminary injunction, because we had

1 asked for a temporary restraining order only has a
2 short-term duration of 14 days. We had asked for a
3 preliminary injunction pending trial on the merits.

4 THE COURT: You're correct. It is the
5 preliminary injunction.

6 MR. WEISS: We understand about the bond, and
7 that that must be posted in order for the order to become
8 effective.

9 THE COURT: All right. It appeared to me that
10 this case was such that the issues are complex enough and
11 need the continuity of judicial officer. So, I've been
12 pre assigned to it.

13 Will you hand one of those to each counsel. That's
14 the pre assignment letter advising you of that.

15 MR. WEISS: Would you like us to prepare a
16 proposed order that contains your findings, something a
17 little more detailed?

18 THE COURT: Yes. If the two of you can't agree
19 on the form, then you'll need to note it up between now
20 and Friday, I suppose.

21 MR. WEISS: All right, and will we be permitted
22 to arrange for the posting of the bond prior to the entry
23 of the order? Can we rely on the oral ruling that you
24 put into the record?

25 THE COURT: Sure. Sure.

1 MR. HANKINS: Your Honor?

2 THE COURT: Did you want to be heard on any of
3 that?

4 MR. HANKINS: Uh -- well, the only thing is,
5 your Honor, I wonder if you would entertain a motion for
6 a stay of your ruling as well?

7 THE COURT: Let's do this. This is my last week
8 as presiding -- civil presiding. So, Friday I know I
9 have a docket over in Benton County. If there's any
10 further motions or if there's argument over presentment
11 of the order, work with court administration to get onto
12 the foot of that docket.

13 MR. HANKINS: Understood.

14 THE COURT: I don't know my schedule well enough
15 to know where I'll be Tuesday, Wednesday Thursday, but I
16 know where I'll be Friday afternoon.

17 MR. WEISS: Thank you, your Honor.

18 THE COURT: All right. Thank you then.

19 MR. HANKINS: Thank you, your Honor.

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23 (Whereupon the requested proceedings concluded at
24 3:06 p.m.)

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1 STATE OF WASHINGTON)
2 COUNTY OF FRANKLIN)
3)
4) SS.

5 I, RENEE L. MUNOZ, Official Court Reporter of the
6 Superior Court of the Pasco Judicial District, State of
7 Washington, in and for the County of Franklin, hereby
8 certify that the foregoing pages comprise a full, true
9 and correct transcript of the proceedings had in the
10 within-entitled matter, recorded by me in stenotype on
11 the date and at the hour herein written, and thereafter
transcribed by me into typewriting.

12
13 That I am certified to report Superior Court
14 proceedings in the State of Washington.

15
16 WHEREFORE, I have affixed my official signature this
17 _____ day of _____, 2012.
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23 RENEE L. MUNOZ
24 Official Court Reporter
Benton-Franklin Counties
Superior Court
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