



IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED  
SUPREME COURT  
STATE OF OKLAHOMA

JUN -7 2017

MICHAEL S. RICHIE  
CLERK

#116102

JAMES P. NAIFEH, STANDARD  
DISTRIBUTING COMPANY, BRIAN  
HUTCHINSON, HUTCHINSON OIL  
COMPANY, LLC, PHILIP MORRIS USA  
INC., R. J. REYNOLDS TOBACCO CO.,  
ROGERS OIL CO., INC., COREY L.  
COOPER, STEPHENSON WHOLESALE  
COMPANY, INC.,

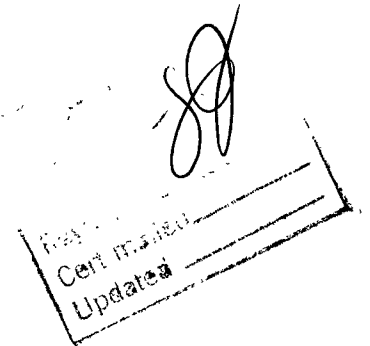
Petitioners,

v.

STATE OF OKLAHOMA, ex rel.  
OKLAHOMA TAX COMMISSION,  
THE HONORABLE MARY FALLIN  
GOVERNOR, in her official capacity,  
THE HONORABLE SENATOR MIKE  
SCHULTZ, SENATE PRESIDENT  
PRO TEMPORE, in his official capacity,  
THE HONORABLE REPRESENTATIVE  
CHARLES MCCALL, SPEAKER OF  
THE HOUSE, in his official capacity,

Respondents.

Case No. \_\_\_\_\_



**PETITIONERS' APPLICATION TO ASSUME ORIGINAL JURISDICTION  
AND PETITION FOR DECLARATORY RELIEF  
AND WRITS OF PROHIBITION AND/OR MANDAMUS**

Robert G. McCampbell, OBA No. 10390  
Jay P. Walters, OBA No. 17364  
Justin Lollman, OBA No. 32051  
GABLEGOTWALS  
ONE LEADERSHIP SQUARE, 15TH FLOOR  
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OKLAHOMA CITY, OK 73102

Lisa S. Blatt (*pro hac vice* forthcoming)  
Sarah Harris (*pro hac vice* forthcoming)  
Rosemary Szanyi (*pro hac vice* forthcoming)  
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601 MASSACHUSETTS AVE., NW  
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**ATTORNEYS FOR PETITIONERS:** James P. Naifeh, Standard Distributing Company,  
Brian Hutchinson, Hutchinson Oil Company, LLC, Philip Morris USA Inc., Corey L. Cooper,  
and Stephenson Wholesale Company, Inc.

—and—

Robert A. Nance, OBA No. 6581  
RIGGS, ABNEY, NEAL, TURPEN ORBISON & LEWIS, P.C.  
528 NW 12TH ST.  
OKLAHOMA CITY, OK 73103

**ATTORNEY FOR PETITIONERS:** R. J. Reynolds Tobacco Company and Rogers Oil Co., Inc.

JUNE 7, 2017

For the reasons set forth in detail in its Brief accompanying this Application and Petition, Petitioners, James P. Naifeh, Standard Distributing Company, Brian Hutchinson, Hutchinson Oil Company, Philip Morris USA Inc., R. J. Reynolds Tobacco Co., Rogers Oil Co., Corey L. Cooper, and Stephenson Wholesale Company, Inc., respectfully request the Court assume original jurisdiction and enter declaratory and other appropriate relief, finding SB 845 to have been unconstitutionally enacted in violation of Art. V, § 33 of the Oklahoma Constitution and enjoining state officials from enforcing it. SB 845, signed into law on May 31, 2017, levies a new \$1.50 per pack tax on cigarettes for the purpose of raising state revenues. In enacting SB 845, the Oklahoma Legislature violated fundamental requirements of Art. V, § 33: (1) the bill originated in the Senate, not the House of Representatives; (2) the bill passed during the five last days of the session; and (3) the bill did not obtain a three-fourths majority in either chamber.

1. James P. Naifeh is an Oklahoma resident and is registered to vote in Creek County, Oklahoma. Mr. Naifeh purchases and smokes cigarettes.

2. Standard Distributing Company is a wholesaler of tobacco products including cigarettes. It is based in Sapulpa, Oklahoma and serves customers in Oklahoma.

3. Brian Hutchinson is an Oklahoma resident and is registered to vote in Beckham County, Oklahoma.

4. Hutchinson Oil Company, d/b/a Hutch's, is a retailer of tobacco products including cigarettes. It is based in Elk City, Oklahoma and serves customers in Oklahoma.

5. Philip Morris USA Inc. is a Virginia corporation that manufactures and sells cigarettes, including cigarettes purchased in Oklahoma.

6. R. J. Reynolds Tobacco Co. is a North Carolina corporation that manufactures and sells cigarettes, including cigarettes purchased in Oklahoma.

7. Rogers Oil Co. is a retailer of tobacco products including cigarettes. It is based in Ponca City, Oklahoma and serves customers in Oklahoma.

8. Corey L. Cooper is an Oklahoma resident and is registered to vote in Bryan County, Oklahoma.

9. Stephenson Wholesale Company, Inc. is a wholesaler of tobacco products including cigarettes. It is based in Durant, Oklahoma and serves customers in Oklahoma.

10. As voters, consumers, and tax-paying businesses, Petitioners are directly harmed by the Legislature's unlawful enactment of SB 845. SB 845 violates Mr. Cooper's, Mr. Hutchinson's, and Mr. Naifeh's constitutional rights under Art. V, § 33 to vote on any revenue-raising bill that fails to obtain a three-fourths majority in both the House and Senate. If permitted to go into effect, SB 845 will impose a new tax of \$1.50 per pack on cigarettes that Stephenson Wholesale Company, Inc., Standard Tobacco Company, and other Oklahoma wholesalers purchase from manufacturers like Philip Morris USA Inc. and R. J. Reynolds Company. Further, SB 845's effect will be to increase the price that Oklahoma retailers, including Hutchinson Oil Company and Rogers Oil Company, and smokers, including Mr. Naifeh, pay for cigarettes. And manufacturers like Philip Morris USA Inc. and R. J. Reynolds Tobacco Company are harmed because SB 845 will likely decrease sales of their cigarettes in Oklahoma.

11. Pursuant to 12 Okla. Stat. § 1653(C), the Attorney General of the State of Oklahoma will be served with file-stamped copies of this Application, the brief in support, the Appendix, and the Notice setting hearing response times. The Oklahoma Tax Commission, through its service agent, is being served with these papers. The Governor of the State of Oklahoma, the Senate President Pro Tempore, and the Speaker of the House are also being served with these papers.

12. This original proceeding is *publici juris* because it challenges a recently enacted bill that imposes a new tax on all cigarette wholesalers in the State of Oklahoma without meeting the State's constitutional prerequisites for revenue-raising bills. Also, SB 845 will take effect on August 24, 2017. The public has a strong and urgent interest in a definitive resolution of this constitutional challenge. The Court has recognized in similar circumstances that original jurisdiction is appropriate. *E.g.*, *Holland v. State ex rel. Okla. Health Care Auth.*, 2010 OK 60, 240 P.3d 665 (challenge under Art. V, § 33); *Fent v. Contingency Review Bd.*, 2007 OK 27, 163 P.3d 512 (challenge under separation of powers provision); *In re State ex rel. Dep't of Transp.*, 1982 OK 36, 646 P.2d 605 (declaratory judgment with respect to Art. X, §§ 14 & 15); *Campbell v. White*, 1993 OK 89, 856 P.2d 255 (challenge under single subject rule).

13. SB 845 is unconstitutional. It is a “bill[] for raising revenue” under Art. V, § 33 because it levies a new tax on cigarette wholesalers for the primary purpose of raising \$257 million in revenue. Yet it was enacted in violation of the strict procedures that Art. V, § 33 imposes on revenue-raising bills: it originated in the Senate, passed on the final day of the legislative session, and secured bare legislative majorities.

14. The State's effort to evade Art. V, § 33 by misbranding SB 845 as a “fee” rather than a “tax” is irreconcilable with the plain terms and direct impact of the legislation. Absent this Court's intervention, the State's approach to circumventing Art. V, § 33 would nullify core procedural protections against taxation that Oklahomans enshrined in the Constitution.

15. This Court grants a writ of prohibition if (1) a court, officer, or person either has, or is about to exercise authority, (2) not authorized by law, and (3) no adequate remedy at law exists. *Cannon v. Lane*, 1993 OK 40 ¶ 12, 867 P.2d 1235. Here, the Legislature and Governor enacted an unconstitutional statute. And petitioners have no adequate remedy at law. SB 845's new tax will have the effect of increasing the price of cigarettes for retailers and consumers who

purchase them. *See* SB 845 § 7(A). Yet those retailers and consumers will have no way to recover the additional costs that the Bill will impose on them. Likewise, SB 845 will likely decrease sales in Oklahoma for cigarette manufacturers, who also have no way to recover these losses. Only wholesalers, as the taxpayers, could seek a refund from the Oklahoma Tax Commission. 68 Okla. Stat. §§ 227, 227.1. The injury to retailers and consumers, including Petitioners here, is therefore irreparable.

WHEREFORE, Plaintiffs pray this Honorable Court assume original jurisdiction and grant declaratory and other ancillary coercive relief declaring that SB 845 was unconstitutionally enacted and void, and enjoining state officials from enforcing it.

Respectfully submitted,



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LLC, Philip Morris USA Inc., Corey L. Cooper,

and Stephenson Wholesale Company, Inc.

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***ATTORNEY FOR PETITIONERS***

R. J. Reynolds Tobacco Company  
and Rogers Oil Co., Inc.

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above and foregoing was hand delivered this 7th day of June, 2017, to:

The Honorable Mary Fallin  
Office of the Governor  
2300 N. Lincoln Blvd. Rm 212  
Oklahoma City, OK 73105

The Honorable Mike Shultz,  
Senate Pro Tempore  
2300 N. Lincoln Blvd. Rm 422  
Oklahoma City, OK 73105

Office of the Attorney General  
313 NE 21<sup>st</sup>  
Oklahoma City, OK 73105

The Honorable Charles McCall,  
Speaker of the House  
2300 N. Lincoln Blvd. Rm 401  
Oklahoma City, OK 73105

Oklahoma Tax Commission  
2501 N. Lincoln Blvd.  
Oklahoma City, OK 73194



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