

# No. 03-13-00753-CV

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FILED IN  
3rd COURT OF APPEALS  
AUSTIN, TEXAS  
5/30/2014 4:49:52 PM  
JEFFREY D. KYLE  
Clerk

*In the Court of Appeals  
Third District of Texas — Austin*

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**SUSAN COMBS, IN HER OFFICIAL CAPACITY AS TEXAS  
COMPTROLLER, AND GREG ABBOTT, IN HIS OFFICIAL CAPACITY  
AS TEXAS ATTORNEY GENERAL**

*Appellants*

v.

**TEXAS SMALL TOBACCO COALITION AND  
GLOBAL TOBACCO, INC.**

*Appellees*

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## APPELLEES' MOTION TO EXPEDITE

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*Attorneys for Appellees,  
Texas Small Tobacco Coalition and Global Tobacco, Inc.*

Appellees Texas Small Tobacco Coalition and Global Tobacco, Inc. (collectively the “Coalition”) file this motion to expedite urging the Court to expedite oral argument, submission, and consideration of this appeal.

This appeal concerns an unconstitutional tax imposed on small, independent tobacco companies that, by design, is not imposed on their Big Tobacco competitors. The Coalition immediately challenged the tax and, shortly after it went into effect, the trial court found it unconstitutional and enjoined its collection. Nonetheless, the Coalition’s members have been required to pay the tax during the State’s appeal as provided in the Texas Tax Code. After the discriminatory tax caused a more than 50 percent reduction in the Coalition members’ sales within the first three months, the Coalition sought a hardship exemption from payment of the tax under the Texas Tax Code, Section 112.108 and Texas Rule of Appellate Procedure 24. The trial court and this Court denied relief, concluding that no court has jurisdiction to consider a hardship that arises during an appeal in a tax challenge.

As explained in the Coalition’s Motion to Review Supersedeas Order and supporting affidavits, the stated purpose of the unconstitutional tax is to protect Big Tobacco’s market share by driving their small tobacco competitors (including the members of the Coalition) out of business. That strategy is working: during the pendency of the State’s appeal, the members of the Coalition have experienced

crippling, drastic reductions in sales that threaten to drive them out of business in Texas before the appeal is concluded. With each passing month, the risk increases that the Coalition members will be forced to cease business in Texas, rendering their challenge to the discriminatory tax moot.

This matter was originally set for submission and oral argument on May 21, 2014, but argument was cancelled and has not yet been reset. The Coalition's understanding is that the Court generally does not hold oral argument during the summer months, which potentially means the case will not be heard and submitted until the fall. It is highly unlikely the Coalition will possess the ability to continue defending this appeal until that time, causing its members irreparable harm and prejudice. As such, to protect this Court's jurisdiction and ensure the continued ability of the Coalition to defend against the State's appeal, the Coalition respectfully requests that the Court hold oral argument, submit the case, and consider this appeal as soon as possible.

### **PRAYER**

For these reasons, Appellees Texas Small Tobacco Coalition and Global Tobacco, Inc. respectfully pray that this Court grant this motion to expedite and expedite oral argument, submission, and consideration of this appeal.

Respectfully submitted,

By: /s/ Craig T. Enoch

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and GLOBAL TOBACCO, INC.**

**CERTIFICATE OF CONFERENCE**

As evidenced by my signature below, counsel for the appellees have attempted but have been unable to confer with counsel for the appellants.

/s/ Craig T. Enoch

Craig T. Enoch

**CERTIFICATE OF SERVICE**

The undersigned certifies that this Motion has been served on the following counsel of record via electronic filing on May 30, 2014:

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*/s/ Craig T. Enoch*  
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Craig T. Enoch