

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

SUFFOLK, ss.

SJC. NO. 12834

VAPOR TECHNOLOGY ASSOCIATION & others vs. THE GOVERNOR & another.

ORDER

1. The defendants' appeal from the order of the Superior Court dated October 21, 2019, allowing in part and denying in part the plaintiffs' motion for a preliminary injunction, which is currently pending in the Appeals Court as A.C. No. 2019-P-1577, is hereby transferred to this court, and will be argued at this court's December, 2019 sitting. The briefing schedule ordered by the Appeals Court single justice will be maintained. The brief of the defendants, as appellants, is due no later than November 13, 2019, and the brief of the plaintiffs and interveners, as appellees, is due no later than November 25, 2019.

2. If the defendants intend to appeal from the order of the Superior Court dated October 24, 2019, on the interveners' request for a preliminary injunction, they shall file a notice of appeal as to that forthwith, and that appeal shall be entered directly in this court and consolidated with their existing appeal. In that event, the briefs filed by the parties pursuant to par. 1 shall address both of the defendants' appeals.

3. If the plaintiffs intend to appeal from the order of the Superior Court dated October 30, 2019, denying what was essentially a renewed request for a preliminary injunction with respect to nicotine vaping products after the adoption of the new emergency regulation, they

shall file a notice of appeal in the Superior Court forthwith, and their appeal shall be entered directly in this court under the same docket number as the defendants' appeal. As the briefing schedule ordered by the Appeals Court single justice does not allow sufficient time for the briefing of cross appeals in the usual fashion before the December argument date, there shall be separate briefing for the defendants' appeal and for the plaintiffs' appeal, as follows. The plaintiffs, as appellants, shall file their brief no later than November 13, 2019, and the defendants, as appellees, shall file their responsive brief no later than November 25, 2019.

Recognizing that there may be substantial overlap in the arguments that each side makes in its briefs in the defendants' appeal and in the plaintiffs' appeal, the parties should try their best to minimize duplication in the briefs that they file in each appeal. Reply briefs will be permitted only as directed by the court.

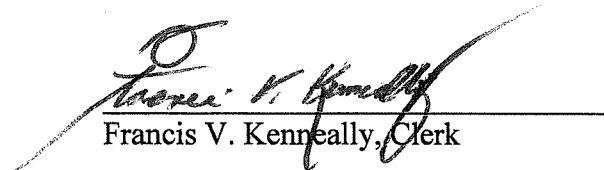
4. Alternatively, if the plaintiffs file their own notice of appeal, and if both sides agree, the briefing may proceed in a more conventional sequence for cross appeals, as follows. The defendants' brief as to their appeal may be filed no later than November 12; the plaintiffs' brief, both in response to the defendants' appeal and in support of their own appeal, may be filed no later than November 19; any interveners' brief in response to the defendants' appeal may be filed no later than November 19; and the defendants' brief in response to the plaintiffs' appeal may be filed no later than November 26.

5. This order does not provide for any appeal that may be taken after the Superior Court rules on the interveners' motion that they filed on October 29, 2019, which remains pending in the Superior Court, essentially renewing their request for a preliminary injunction with respect to marijuana vaping products after the adoption of the emergency regulation. The parties shall notify the clerk of this court immediately once the Superior Court judge rules on that motion;

shall indicate whether it is feasible to hear any such appeal at the December sitting, at the same time as the other appeals; and, if so, shall propose a briefing schedule that allows that to happen.

If the parties cannot agree on a briefing schedule, the court will promptly set one.

By the Court,


Francis V. Kenneally, Clerk

Dated: November 4, 2019