IN THE SUPREME COURT OF FLORIDA

CASE NO. SC11-1611
L.T. NO. 1D10-2820

AMANDA JEAN HALL,

Petitioner,

v.

R.J. REYNOLDS TOBACCO COMPANY,

Respondent.

On Discretionary Review From The First District Court Of Appeal

RESPONDENT'S BRIEF IN OPPOSITION TO JURISDICTION

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STATEMENT OF THE CASE AND FACTS

In 1997, respondent R.J. Reynolds Tobacco Company and certain other cigarette manufacturers agreed to pay the State of Florida "approximately $13 billion over 25 years along with additional payments that will continue in perpetuity." App. 4.[1] Payments under these Florida Settlement Agreements ("FSAs")—which are now approximately $350 million per year—"fund various state agencies and programs." *Id.* Following this Court's decertification of the *Engle* class action, and the subsequent filing of cases involving some 9000 *Engle* progeny plaintiffs, the Legislature became concerned about "the potential adverse impact of large verdicts in suits filed by individual smokers on the ability of the tobacco companies to continue to make the [FSA] payments." *Id.* at 4, 6. It responded by capping the supersedeas bonds that FSA signatories would have to post in order to appeal adverse judgments in lawsuits brought by members of any decertified class action. *See* § 569.23(3), Fla. Stat. (the "FSA Bond Cap").

In this *Engle* progeny case, plaintiff Amanda Hall obtained a $15.75 million judgment against Reynolds. The First District affirmed that judgment on the merits, 2011 WL 1938199 (May 20, 2011), and this Court denied discretionary review, 2011 WL 2863614 (July 19, 2011). Reynolds intends to file a petition for a writ of certiorari in the Supreme Court of the United States, which is presently due

[1] Citations to the First District's opinion as reproduced in Petitioner's Appendix are noted as "App. [page number]."

on October 17, 2011.[2] Pursuant to the FSA Bond Cap, Reynolds initially posted a $5 million supersedeas bond, and, after this Court denied discretionary review, it then posted a $15 million supersedeas bond.

In the meantime, Mrs. Hall challenged the constitutionality of the FSA Bond Cap. The trial court rejected that challenge, and the First District affirmed. Relying on a long line of this Court's precedent, the First District held that the FSA Bond Cap is not a special law because "the protection of the State's pecuniary interest in the revenue stream under the FSA is a matter of significant statewide importance" and the law's provisions "are reasonably related to this important state interest." App. 13. The First District further held that the FSA Bond Cap does not violate the separation of powers because Rule 9.310(a) of the Florida Rules of Appellate Procedure expressly accommodates legislation in this field. *Id.* at 23.

SUMMARY OF THE ARGUMENT

This Court should decline to exercise discretionary jurisdiction over the decision below in this case. A unanimous panel of the First District faithfully applied many of this Court's settled precedents, and its decision does not conflict with that of any other trial or appellate court. Moreover, the constitutional challenges that Mrs. Hall seeks to raise here have arisen only infrequently—in only four *Engle* progeny cases, all within the First District—and have been uniformly

[2] Upon a showing of good cause, this time can be extended "for a period not exceeding 60 days." U.S. Sup. Ct. Rule 13.5.

rejected. Furthermore, the bond-cap statute poses no risk of harm to Mrs. Hall or to any of the other three plaintiffs with pending challenges to it. Finally, Mrs. Hall herself correctly characterizes the issue on which she seeks review as a "collateral issue" at risk of soon becoming moot.

ARGUMENT

Despite this Court's denial of review on the merits of the underlying judgment in this case, Mrs. Hall asks the Court to exercise discretionary jurisdiction over what she herself describes as "collateral" and soon-to-be-moot issue (Pet. 10) regarding the sufficiency of Reynolds' appeal bond. For several reasons, the Court should decline that request.

I. The First District Correctly Applied Settled Precedent

This Court may decline discretionary review if it "determines that the case does not present a significant issue or the result was essentially correct." Harry Lee Anstead, Gerald Kogan, Thomas D. Hall & Robert Craig Waters, *The Operation and Jurisdiction of the Supreme Court of Florida*, 29 Nova L. Rev. 431, 485 (2005). In upholding the constitutionality of the FSA Bond Cap, the First District broke no new legal ground. To the contrary, it engaged in a straightforward application of this Court's settled precedents. Its decision was unanimous, and in agreement with the unanimous view of the three trial-court judges to have considered the same question.

In response to this uniformly adverse precedent, Mrs. Hall scarcely mounts any argument that the First District's decision was wrong, much less that it conflicts with other judicial decisions.

1. Without citation of authority, Mrs. Hall briefly asserts that the determination whether a law is "special" for constitutional purposes turns solely on the breadth of its application. Pet. 4. But as the First District explained, this Court "has previously found statutes that have a narrow application to be general laws, rather than special laws, where the statute served an important statewide purpose." App. 12; *see, e.g.*, *Schrader v. Fla. Keys Aqueduct Auth.*, 840 So. 2d 1050, 1052–56 (Fla. 2003) (statute applied only to "local government within the Florida keys"); *Golden Nugget Grp. v. Metro. Dade Cnty.*, 464 So. 2d 535, 536–37 (Fla. 1985) (statute applied only to one county); *Dep't of Legal Affairs v. Sanford-Orlando Kennel Club, Inc.*, 434 So. 2d 879, 880–82 (Fla. 1983) (per curiam) (statute applied only to two racetracks). For example, although the statute at issue in *Sanford-Orlando Kennel Club* benefitted only two pari-mutuel racing facilities, this Court upheld the statute as a general law. The Court reasoned that the statute advanced the State's "pecuniary interest in racing because of the substantial revenue it receives from pari-mutuel betting," and used a classification "reasonably related to the subject matter." *Id.* at 881–82.

Mrs. Hall's special-law argument cannot withstand these precedents. Given the billions of dollars and the crucial public programs at stake, "the protection of the State's pecuniary interest in the revenue stream under the FSA" is plainly "a matter of significant statewide importance." App. 13. Moreover, the FSA Bond Cap is "reasonably related to this important statewide interest" because it preserves the ability of FSA signatories to make FSA payments during the pendency of appeals, even as numerous adverse judgments mount. *Id.* Thus, far from "gut[ting]" the constitutional restrictions on special laws (Pet. 4), the First District correctly applied this Court's settled precedents.

2. The First District also correctly rejected Mrs. Hall's contention that the FSA Bond Cap violates the separation of powers by undermining what she describes as "this Court's own authority over judicial rulemaking." Pet. 4. By their terms, the appellate rules promulgated by this Court merely set out default appeal-bond provisions, which apply "[e]xcept as provided by general law." Fla. R. App. P. 9.310(a). In promulgating Rule 9.310, this Court confirmed that the rule "preserves *any* statutory right to a stay." *In re Proposed Fla. Appellate Rules*, 351 So. 2d 981, 1010 (Fla. 1977) (per curiam) (emphasis added). Moreover, this Court applied Rule 9.310 in rejecting a separation-of-powers challenge to a statute that altered both the venue and the standard for defendants to obtain stays of arbitral awards in medical-malpractice cases. *St. Mary's Hosp., Inc. v. Phillipe*, 769 So. 2d

961, 964–65, 966 (Fla. 2000) (per curiam). Similarly, the Third District applied Rule 9.310 to reject a separation-of-powers challenge to a bond-cap statute in *BDO Seidman, LLP v. Banco Espirito Santo International, Ltd.*, 998 So. 2d 1 (Fla. 3d DCA 2008), and this Court denied review, 996 So. 2d 211 (Fla. 2008).

Mrs. Hall's separation-of-powers challenge is inconsistent with all of this settled precedent. Like the bond cap in *BDO Seidman* and the altered arbitral stay in *St Mary's Hospital*, the FSA Bond Cap is a valid general law of the kind permitted by Rule 9.310—it concerns the substantive rights "to judicial review" and "to payment of [an] award," *St. Mary's Hosp.*, 769 So. 2d at 963–64, and "to property and to appeal," *BDO Seidman*, 998 So. 2d at 2. It therefore "does not impermissibly intrude" on this Court's "rulemaking authority." App. 23.

II. There Is No Other Reason For This Court To Exercise Its Discretionary Jurisdiction

Unable to allege any division of authority, Mrs. Hall contends that review in this Court is nonetheless appropriate because of the number of cases affected by her constitutional challenge, because of equitable considerations, and because of imminent mootness. Each of those factors affirmatively counsels against review.

1. Mrs. Hall asserts that her constitutional challenge to the FSA Bond Cap "will impact hundreds, if not thousands" of *Engle* progeny appeals, and "the amount of money at stake is in the hundreds of millions." Pet. 4–5. Those figures are grossly exaggerated for one simple reason: virtually no *Engle* progeny

plaintiffs have seen fit to raise the insubstantial constitutional claims at issue. To the contrary, out of approximately 35 plaintiffs who have prevailed in *Engle* progeny cases, only four—all of whom are in the First District and three of whom are represented by Mrs. Hall's counsel—have pressed challenges to the bond-cap statute. *Id.* at 10. To be sure, Mrs. Hall's appellate counsel threatens to challenge the FSA Bond Cap in his other cases. *See id.* But those future challenges—in a small handful of cases within the First District—will be squarely foreclosed by the decision in this case, and thus will generate no substantial additional litigation.

In stark contrast to the appeal-bond question raised by Mrs. Hall, the question regarding proper use of the *Engle* jury findings in *Engle* progeny cases goes to the core of how those cases should be tried on the merits, has arisen and will arise in each *Engle* progeny case, and has already generated existing judgments that exceed $493 million. This Court recently declined to exercise its discretionary jurisdiction to resolve that question, including in this very case. *See, e.g.*, *R.J. Reynolds Tobacco Co. v. Hall*, No. SC11-1165, 2011 WL 2863614 (Fla. July 19, 2011); *R.J. Reynolds Tobacco Co. v. Martin*, No. SC11-483, 2011 WL 2848783 (Fla. July 19, 2011). What Mrs. Hall herself describes as a "collateral issue" regarding the amount of appeal bonds (Pet. 10), which has arisen in only a handful of *Engle* progeny cases, surely can be no more important than the core merits question implicated in all *Engle* progeny trials.

2. No equitable considerations warrant the exercise of discretionary jurisdiction in this case. Mrs. Hall asserts that the FSA Bond Cap creates "an important imbalance of power compared to normal cases." Pet. 6. That assertion rings hollow in *Engle* progeny cases, in which the courts have allowed plaintiffs to obtain large money judgments without proving the wrongful-conduct elements of Florida tort law. *See R.J. Reynolds Tobacco Co v. Martin*, 53 So. 3d 1060, 1069 (Fla. 1st DCA 2010); *R.J. Reynolds Tobacco Co. v. Brown*, No. 4D09-2664, 2011 WL 4374407 (Fla. 4th DCA Sept. 21, 2011). In any event, the FSA Bond Cap threatens no injury or unfairness either to Mrs. Hall or to the three other plaintiffs with pending challenges to that statute.

Mrs. Hall states that the FSA Bond Cap "has resulted in *Engle* plaintiffs being under secured" (Pet. 6), but she does not argue that *she* will face any risk of non-payment, if her judgment should survive possible review by the Supreme Court of the United States, because the present appeal bond is $15 million under the FSA Bond Cap as opposed to $17.64 million under the default provisions of Rule 9.310. Nor does she argue that any such risk is present for the other three plaintiffs who have challenged the FSA Bond Cap. And any such argument would be fanciful, given Mrs. Hall's own evidence that Reynolds' net worth is approximately $8 billion. *See* R.66:3578 (T.32:2883). The Legislature enacted the FSA Bond Cap out of a concern that, as multiple adverse *Engle* progeny judgments

mount over time, defendants may at some point become unable to post appeal bonds without jeopardizing the FSA payments. That possibility does not affect plaintiffs like Mrs. Hall, who are at or near the front of the line.

Mrs. Hall further contends that the FSA signatories "have received a windfall in terms of setting aside less collateral and paying less in bond premiums." Pet. 6. The reduction of a defendant's litigation expenses cannot fairly be described as a "windfall"—particularly where, as here, it has no possible adverse impact on the plaintiff.

Mrs. Hall further argues that the FSA Bond Cap "increases the incentive for tobacco companies to appeal." *Id.* But as she herself explains, the average plaintiff's verdict in the *Engle* progeny cases tried to date is $14.5 million (*id.* at 5)—which gives defendants ample incentive to appeal in any event. Moreover, the FSA Bond Cap in no way prevents operation of the normal rules regarding post-judgment interest, which further protect plaintiffs from any delay attributable to appeals that ultimately prove unsuccessful.

3. Finally, Mrs. Hall invites review because "this issue may become moot in every case before the issue has time to reach the Court and to be decided on the merits." Pet. 9. Of course, mootness ordinarily is a basis to *decline* to exercise jurisdiction. *See, e.g.*, *Godwin v. State*, 593 So. 2d 211, 212 (Fla. 1992) ("A moot case generally will be dismissed."); *Waked v. Feghali*, No. SC11-775, 2011 Fla.

LEXIS 2110 (Fla. Sept. 1, 2011). And this particular issue is not one that inherently resists review in this Court, as it becomes moot in a given case only after a final disposition of the underlying appeal. Accordingly, nothing will prevent future plaintiffs from seeking review in this Court of the appeal-bond issue while a defendant's underlying merits appeal remains pending before a District Court of Appeal. Moreover, even after a district court has ruled, this Court still may address the "collateral" appeal-bond issue, should it ever wish to do so, in any decision in which it reviews the merits of the underlying judgment.

CONCLUSION

The Court should decline to exercise discretionary jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Respondents' Brief In Opposition To Jurisdiction has been served to the following persons via e-mail[1] this 3rd day of October, 2011:

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[1] The parties have agreed to accept service by mail at the email addresses listed above in lieu of service by U.S. mail and have further agreed that electronic service will be deemed service by mail for purposes of Fla. R. App. P. 9.420(e).

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Respondents' Brief In Opposition To Jurisdiction uses Times New Roman 14-point font and complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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