

IN THE SUPREME COURT OF FLORIDA

BRINDA COATES, as personal
representative of the estate of Lois
Stucky,

Petitioner,

v.

Case No.: SC21-175
L.T. No.: 5D19-2549

R.J. REYNOLDS TOBACCO CO.,

Respondent.

**ON REVIEW FROM THE DISTRICT COURT OF APPEAL
FIFTH DISTRICT, STATE OF FLORIDA**

PETITIONER'S BRIEF ON JURISDICTION

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STATEMENT OF THE ISSUES

The issue over which jurisdiction is invoked is whether the amount of punitive damages that may be awarded for a defendant's misconduct depends on the actual amount of compensatory damages awarded where the compensatory award happens to be modest and the punitive award would be sustained in comparison to compensatory awards in other cases for comparable injuries caused by comparable misconduct.

If the Court grants review, the petitioner may address the related issue of the extent to which the remedy for an excessive punitive damage award must afford the defendant the option of a new trial in lieu of reducing the punitive award to the maximum amount that could be sustained. The petitioner expects that to be a moot issue and, in any event, recognizes the Court may decline to reach that issue. Her position on jurisdiction and desire for this Court's review would be unaffected by a decision not to reach this additional issue.

STATEMENT OF THE CASE AND FACTS

As personal representative of the estate of Lois Stucky, Brinda Coates obtained a jury verdict on her non-*Engle* claim¹ against R.J. Reynolds Tobacco Company for defectively designing cigarettes that caused Ms. Stucky to develop lung cancer, which killed her. (App. 5 & n.1.) The jury awarded \$300,000 in compensatory damages to Ms. Stucky's three surviving adult children (reduced to \$150,000 after applying the jury's comparative fault finding) and \$16 million in punitive damages based on the extent of Reynolds's misconduct and its \$23.9 billion net worth. (App. 5-6, 6 n.2.) The trial court upheld the punitive award, but the Fifth District reversed, concluding it was excessive under Florida and federal law. (App. 7.)

The district court began its state-law analysis by concluding the award was not the result of prejudice or passion, "could have been reached in a logical manner by reasonable persons," and fell "well within the range of punitive damages amounts awarded in other tobacco cases." (App. 8-10, 9 n.4.) Applying the statute governing a punitive award that is more than three times the

¹ That is, she is not a member of the class addressed in *Engle v. Liggett Grp., Inc.*, 945 So. 2d 1246 (Fla. 2006). (App. 5 n.1.)

compensatory award, the court concluded that Ms. Coates had satisfied her burden of proving “by ‘clear and convincing evidence that the award is not excessive in light of the facts and circumstances which were presented to the trier of fact.’ ” (App. 10 (quoting § 768.73(1)(b), Fla. Stat. (1997)).)

Despite these findings, the district court concluded the punitive award was excessive under state law. It relied on section 768.74(5)(d), Florida Statutes (1997), which requires a court considering whether an award of “money damages” is excessive to consider “[w]hether the amount awarded bears a reasonable relation to the amount of damages proved and the injury suffered.” (App. 8.) It read this language as requiring consideration of “the disparity between the punitive and compensatory damages awards,” which was either 106.7 or 53.3 to 1 depending on whether the punitive award is compared to the net or gross compensatory award. (App. 10-12.)

The sole explanation for why the district court found the trial court’s contrary ruling to be an abuse of discretion was as follows:

Like pornography, which is not susceptible of easy definition but is identifiable upon viewing, a punitive damages award of 106.7 (or 53.3) times the compensatory award is, in our mind, excessive and thus is unsustainable under state law.

(App. 12.)

The district court began its constitutional analysis by recognizing that the reprehensibility of the defendant's conduct was "the most important indicium of the reasonableness of a punitive damages award" and supported the award here. (App. 13, 15-16.) But it found that the award was nonetheless excessive because "a ratio of 106.7 to 1 (or even 53.3 to 1) [is] excessive under federal due process constraints." (App. 16.) The court "emphasize[d] that it is not the actual dollar amount of the punitive damages award that is excessive" because "[p]unitive damages even greater than \$16 million have been affirmed in other tobacco cases," citing upheld punitive awards in excess of \$20 million. (App. 16.) It reversed because, even though it considered the compensatory award modest,

it is the dollar amount of the punitive damages award compared to the dollar amount of the compensatory damages award that requires a remittitur.

(App. 13 n.7, 16-17.)

The district court rendered its decision on January 7, 2021, when it denied Ms. Coates's motion for rehearing, but issued a corrected opinion² certifying a question of great public importance:

When other factors support the amount of punitive damages awarded, but the award is excessive compared to the compensatory award, does the amount of punitive damages that may legally be imposed for causing the death of a human being depend on the actual amount of compensatory damages awarded to the decedent's estate, even when that compensatory award is modest and the punitive award would be sustainable compared to awards in other cases for comparable injuries caused by comparable misconduct?

(App. 17.)

² The corrected opinion retains the date of the original October 23, 2020 opinion, but was in fact issued on January 7, 2021, along with a separate order denying Ms. Coates's motion for rehearing.

ARGUMENT

I. The Court should accept review to determine whether the amount of punitive damages that may be awarded to punish and deter misconduct depends on the amount of compensatory damages awarded even where higher punitive awards have been upheld for comparable misconduct causing the same injury to other plaintiffs.

A. The decision below passed upon a certified question.

This Court has jurisdiction under article V, section 3(b)(4), Florida Constitution, because the district court certified a question of great public importance that it answered in the affirmative by holding that the punitive damage award was excessive solely in light of the modest amount of the compensatory award, even though it would otherwise be sustainable based on the evidence and in comparison to awards upheld in other cases for comparable injuries caused by comparable misconduct.

The district court agreed with Ms. Coates that Reynolds's misconduct here showed the same "extreme indifference and reckless disregard for the health and safety of consumers" as this Court considered in (unanimously) upholding a \$30 million punitive award in *Schoeff v. R.J. Reynolds Tobacco Company*, 232 So. 3d 294 (Fla. 2017). (App. at 15-16.) It reversed based solely on the amount of the compensatory award, even though it found that amount to be

modest in comparison to compensatory awards upheld in other cases for similar deaths caused by similar misconduct.

Similar cases confirm the potential amount of compensatory damages Reynolds faced for causing Ms. Stucky's cancer and death would have easily sustained the punitive award here. Had the case gone to trial before Ms. Stucky died, her personal injury damages for her lung cancer could have been as high as the \$10 million award upheld in *R.J. Reynolds Tobacco Company v. Smith*, 131 So. 3d 18 (Fla. 1st DCA 2013). Had she left behind a surviving spouse who was still alive by the time of trial, compensatory damages could have been as high as the \$15 million affirmed in *R.J. Reynolds Tobacco Company v. Schleider*, 273 So. 3d 63 (Fla. 3d DCA 2018). And although the jury only awarded a modest \$100,000 for each of her three adult surviving children, this Court has upheld as much as \$6 million for a single adult surviving child in *Odom v. R.J. Reynolds Tobacco Company*, 254 So. 3d 268 (Fla. 2018). Thus, the punitive award was **less** than the potential compensatory award and certainly less than three times the potential award.

B. The importance of the issue is broader than may first appear and warrants review.

This case warrants review because the issue underlying the certified question is more important than it may first appear.

(1) Prompt resolution of the certified question as opposed to letting the issue percolate is important especially in tobacco litigation because a final answer will help parties understand the tobacco companies' potential exposure and facilitate the settlement of the hundreds of remaining *Engle* cases and the ever-growing number of non-*Engle* tobacco cases where the smoker and their spouse have died. This is especially important as Florida courts are facing a year-long backlog of cases to try in light of the pandemic. Indeed, by ruling that Reynolds may elect a new trial if it does not accept the amount of the remittitur determined on remand,³ many of these case may have to be tried multiple times.

³ As noted in the statement of issues, if review is granted, Ms. Coates may challenge this ruling in light of *Johansen v. Combustion Engineering, Inc.*, 170 F.3d 1320, 1330-33 (11th Cir. 1999), though it should be moot or the Court may decline to address it.

(2) The underlying issue is not limited to tobacco cases, wrongful death cases, or even cases involving personal injuries. The issue is the same whether the “comparable injuries” are personal injuries short of death. And as will be shown in a moment, the case law on this issue arises just as often, if not more so, in cases involving misconduct causing or threatening commercial or reputational injuries.

(3) The district court’s holding conflicts with a number of authorities, including decisions from this Court and the Fourth District, which would provide an independent basis for jurisdiction had no question been certified. Regardless, even indirect conflicts further warrant resolving the certified question.

(a) By largely approving the trial court’s reasoning but reversing under Florida law based on a purely subjective “we-know-it-when-we-see-it” standard, the decision conflicts with this Court’s holdings regarding abuse of discretion review. *E.g., Odom*, 254 So. 3d at 278-79. This is a classic example of appellate judges substituting their subjective judgment for that of the trial judge – that is de novo review. Indeed, it is a paraphrase of a Justice Stewart observation on an issue subject to de novo review.

Jacobellis v. Ohio, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

(b) The district court's conclusion that Florida law requires a reasonable relationship between the amounts of compensatory and punitive damages conflicts with a long line of decisions by this Court holding that Florida law has no such requirement and that the requirement to compare the punitive award to the plaintiff's injury comes from the United States Constitution. *Engle*, 945 So. 2d at 1263-64. Compare *Ault v. Lohr*, 538 So. 2d 454, 456 (Fla. 1989) (punitive damages need not bear any relation to compensatory damages), and *Arab Termite & Pest Control of Fla., Inc. v. Jenkins*, 409 So. 2d 1039, 1042-43 (Fla. 1982) (same), with *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003) (implying from Due Process Clause a requirement to review the disparity between a punitive award and the actual or potential harm suffered by the plaintiff), *Cooper Indus., Inc. v. Leatherman Tool Grp.*, 532 U.S. 424, 432 (2001), *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559 (1996), and *TXO Prod. Corp. v. All. Res. Corp.*, 509 U.S. 443 (1993) (same).

(c) The district court’s suggestion that section 768.74(5)(d), Florida Statutes (1997), requires a court to approve the reasonableness of the relation between punitive and compensatory damages beyond the requirements of section 768.73 interprets section 768.74(5)(d) to conflict with Florida law stated by this Court in *Engle* and *Ault*, as well as the district court in *Lawnwood Medical Center, Inc. v. Sadow*, 43 So. 3d 710, 725 (Fla. 4th DCA 2010). It also conflicts with the actual statutory text. Even if applicable to the amount of punitive damage, section 768.74(5)(d) requires a determination of whether the amount bears a reasonable relationship to not just “the damages proven,” but also “the injury suffered.” As the district court observed, the award here is reasonable in relation to other awards for the same injuries suffered here – lung cancer and death.

(d) The district court’s constitutional analysis directly conflicts with the U.S. Supreme Court precedent this Court recognized in *Engle*, which unequivocally requires comparison of a punitive award with the “actual or potential harm suffered by the plaintiff” and prohibits a mere comparison of the punitive award to the amount of compensatory damages. *E.g., Campbell*, 538 U.S. at

418; *Gore*, 517 U.S. at 582. Applying this principle, the Supreme Court has upheld a \$10 million punitive award that was 526 times the \$19,000 compensatory award because the actual or potential harm – a purely reputational injury, no less – threatened by the defendant’s conduct could amount to several million dollars. *TXO Prod. Corp.*, 509 U.S. at 459-62.

(e) The Fourth District, in conflict with the Fifth District’s decision here, has applied the foregoing Supreme Court due process decisions to uphold a \$5 million punitive award in a slander case where the jury awarded **zero** compensatory damages because the award was reasonable in comparison to the nature of the reputational injury the defendant’s conduct threatened.

Lawnwood Med. Ctr., 43 So. 3d at 722-33.

(4) This is also an important area of the law worthy of this Court’s attention because it depends on judge-made law that has little support in the constitutional text. In addition to uniformly requiring comparison of the punitive award to the actual or potential harm (and not the amount of compensatory damages), the common thread in every modern Supreme Court decision considering a constitutional challenge to a state punitive damage

award has been the dissenting views of Justices Scalia and Thomas that the text of the Constitution cannot be read to regulate the amount of punitive damage awards. *E.g.*, *Cooper Indus.*, 532 U.S. at 443 (Thomas, J., concurring); *Gore*, 517 U.S. at 598-99 (Scalia, J., dissenting).

As those views make clear, interpreting the Due Process Clause to regulate the amount of punitive damages a state court may award violates the primacy-of-text principle. And while this Court certainly cannot overrule Supreme Court constitutional precedents, it has an interest in ensuring that Florida judges do not engage in further judicial legislation in the name of constitutional interpretation. And even if this Court were to agree with Reynolds that Supreme Court precedent compelled the district court's conclusion, it should overturn the district court's state-law holding so that Ms. Coates may seek review in the Supreme Court.

(5) The district court's holding implicates troubling problems of equal treatment under the law. It means that, as a matter of state and federal law, a defendant should be punished less for killing some people than others. It means the law prevents a jury from imposing the same punishment for killing a poor person with no

surviving relatives than for killing a person whose wealth or circumstances resulted in a high economic damage award and/or who left behind a grieving widow or traumatized young children resulting in a high non-economic damage award. What possible justification is there for requiring such disparate treatment for the same or similar misconduct? Especially in a case like this where the defendant had not targeted the plaintiff specifically and simply engaged in an egregious course of conduct threatening to kill millions of people regardless of their circumstances, why can a jury not determine that killing one human warrants the same punishment as killing another? The district court offered no reason.

(6) By directly tying the permissible amount of punitive damages to the amount of compensatory damages, the decision below blurs the lines between compensatory and punitive damages, overlooking their different purposes. *See generally Engle*, 945 So. 2d at 1262 (quoting *Cooper Indus., Inc.*, 532 U.S. at 432). A requirement of a reasonable relationship between the punitive damage award and the injury inflicted or threatened by the defendant's misconduct is appropriate to ensure the punishment fits the crime. But by directly tying the permissible amount of

punitive damages to the amount of compensatory damages, the district court binds punitive awards to compensatory concepts at the expense of the societal need for punishment and deterrence.

CONCLUSION

The Court should accept jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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I HEREBY CERTIFY that the foregoing brief complies with the font requirements of Florida Rule of Appellate Procedure 9.045(b) and the word limit requirements of Rule 9.210(a)(2).

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