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

IN THE SUPREME COURT OF FLORIDA

BRINDA COATES, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF LOIS STUCKY,

Plaintiff/Petitioner,

v.

R.J. REYNOLDS TOBACCO CO.,

Defendant/Respondent

On Review from the District Court of Appeal
Fifth District, State of Florida

BRIEF ON JURISDICTION OF RESPONDENT R.J. REYNOLDS TOBACCO COMPANY

Charles R.A. Morse
Florida Bar No. 91561
Jones Day
250 Vesey Street
New York, NY 10281-1047
Phone: (212) 326-3939
cramorse@jonesday.com

Jason T. Burnette
Florida Bar No. 125200
Brian C. Lea
Florida Bar No. 1011371
Jones Day
1420 Peachtree Street, N.E.,
Suite 800
Atlanta, GA 30309-3053
Phone: (404) 521-3939
jtburnette@jonesday.com
blea@jonesday.com

Troy A. Fuhrman
Florida Bar No. 985211
Marie A. Borland
Florida Bar No. 847984
Hill Ward Henderson
101 East Kennedy Boulevard,
Suite 3700
Tampa, FL 33601
Phone: (813) 221-3900
Facsimile: (813) 221-2900
troy.fuhrman@hwhlaw.com
marie.borland@hwhlaw.com

Counsel for Defendant/Respondent R.J. Reynolds Tobacco Company

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STATEMENT OF THE ISSUES

Restated for accuracy, the issue Plaintiff Brinda Coates asks this Court to review is:

> Whether, under Florida law and the federal constitution, a punitive-damages award can be deemed excessive due to the relationship of that award to the compensatory-damages award if other factors would not have dictated the conclusion that the punitive-damages award is excessive?

Ms. Coates adds that, if the Court grants review, she might also brief the propriety of remittitur. Initial Brief on Jurisdiction (IBJ) iv. Reynolds does not address that issue here: (1) It is undisputed that this uncertified remedial question provides no independent basis for jurisdiction; and (2) Ms. Coates waived the issue by failing to present it to the district court. *E.g.*, *Tillman v. State*, 471 So. 2d 32, 34 (Fla. 1985) (This Court may only review issues that "ha[ve] been properly preserved.").

STATEMENT OF THE CASE AND FACTS

This case concerns a punitive-damages award that exceeded the $150,000 compensatory award by the unprecedented ratio of 106.7:1. This award was straightforwardly unlawful under both Florida law and the federal constitution. *E.g.*, *Schoeff v. R.J.*

Reynolds Tobacco Co., 232 So. 3d 294, 308 (Fla. 2017) ("Punitive damages must … be reviewed alongside compensatory damages to ensure a reasonable relationship between the two." (quotation omitted)); *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003) ("[F]ew awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process."). The district court recognized as much, but certified the question whether the ratio of punitive to compensatory damages should be disregarded altogether. A.17.

This Court should decline review. First, review would be an academic exercise. This Court is bound by the U.S. Supreme Court's constitutional decisions, which make clear this award cannot stand. Second, this Court's own decisions—which Ms. Coates mischaracterizes or ignores—dictate the same result under Florida law. Finally, the case is of limited practical importance, because no plaintiff has a right to punitive damages and outlandish ratios like the one here are vanishingly rare.

1. In this non-*Engle*-progeny case, Ms. Coates brought a wrongful death action against Reynolds for the death of her sister, Lois Stucky. The jury rejected her fraudulent-concealment and

negligence claims, but she prevailed on her strict-liability claim for design defect. The jury awarded Ms. Stucky's three adult children a total of $150,000 in compensatory damages, after reduction based on Ms. Stucky's comparative fault. The jury awarded punitive damages of $16 million—106.7 times greater than the $150,000 compensatory award. A.5.[1] The trial court upheld the award without explanation. A.7 & n.3.

2. The district court found the punitive award excessive under both Florida law and federal law. Beginning with Florida law, the court applied the governing 1997 version of Section 768.73, Florida Statutes, and found the evidence supported a punitive award exceeding the presumptive maximum 3:1 ratio. A.10–11. But the court concluded that the evidence did *not* "support[] a punitive award exceeding the compensatory award by a ratio of 106.7 (or even 53.3) to 1." A.11 (applying § 768.74(5), Fla. Stat.). The court acknowledged that the inquiry was an imprecise one, but explained that the "difficulty is alleviated in the instant case by the enormity

[1] Previously, Ms. Coates incorrectly asserted that the legally relevant ratio is only 53.3:1. As the district court recognized, the award is excessive under either calculation. A.10 n.6.

of the disparity between the punitive and compensatory damages awards." A.11–12.

Turning to federal law, the court noted that the U.S. Supreme Court has articulated three factors for assessing whether a punitive-damages award comports with due process: (1) the reprehensibility of the misconduct, (2) the disparity between the harm to the plaintiff and the size of the award, and (3) the difference between the award and civil penalties in comparable cases. A.12–13 (citing *Campbell*, 538 U.S. at 418). The court noted that reprehensibility is the most important factor, and held it established. A.13–16. However, "even affording that factor preeminence," the court "conclude[d] that the award … was excessive" in light of the other two factors. A.16.

The court therefore reversed the punitive award and remanded for remittitur "or, if remittitur is rejected by either party, a new trial solely on the amount of punitive damages." A.17. Later, at Ms. Coates's request, the court certified as of great public importance the question whether a court may deem a punitive award impermissible on the ground it is "excessive compared to the compensatory award." *Id.*

ARGUMENT

I. This case presents no question of "great public importance" because Ms. Coates's position is foreclosed under both federal and state law.

A. Both this Court and the United States Supreme Court have resolved this question against Ms. Coates.

Ms. Coates's position is that the ratio of punitive damages to compensatory damages should play no role in the analysis of whether a punitive-damages award is excessive. In other words, if an award is not foreclosed by other factors, no punitive-to-compensatory ratio—however disproportionate—could render it improper. This position is flatly foreclosed by this Court's decisions interpreting Florida law, and the U.S. Supreme Court's decisions interpreting the federal Constitution.

As to Florida law, this Court has squarely held that courts must "evaluat[e] … the punitive and compensatory amounts awarded to ensure a reasonable relationship between the two." *Engle v. Liggett Grp., Inc.*, 945 So. 2d 1246, 1264 (Fla. 2006); *accord Schoeff*, 232 So. 3d at 308. And as to federal law, the U.S. Supreme Court has repeatedly instructed courts to consider the "ratio between punitive and compensatory damages" in assessing punitive awards. *Campbell*, 538 U.S. at 416–17, 425. The Supreme Court has

explained, for example, that "few awards exceeding a single-digit ratio between punitive and compensatory damages … will satisfy due process," *id.* at 425; that due process prohibits awards exceeding single-digit ratios in "all but the most exceptional of cases," *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 514–15 (2008); that punitive damages that are "more than four times the amount of compensatory damages might be close to the line of constitutional impropriety," *Campbell*, 538 U.S. at 425; and that "[w]hen compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee," *id.* *See also, e.g.*, *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 580 (1996).

Under these principles, the punitive award here was straightforwardly unlawful. The 106.7:1 ratio is *more than 35 times greater* than the 3:1 ratio that would make the award presumptively invalid under applicable Florida law. *See* A.7 (applying § 768.73(1), Fla. Stat. (1997)). And a *triple*-digit ratio can hardly pass muster when the U.S. Supreme Court has insisted that punitive awards exceeding a *single*-digit ratio are generally unlawful. *Campbell*, 538 U.S. at 425. Wherever the line of permissibility lies, this case falls

far beyond it.[2]

B. Ms. Coates's counterarguments fail.

1. Ms. Coates strangely insists that this Court has not recognized that Florida law requires a reasonable relationship between punitive and compensatory damages. IBJ 9. In doing so, Ms. Coates misreads the *Engle* opinion, which discussed the reasonable relationship requirement in the context of what "Florida law requires." 945 So. 2d at 1263–64 (noting the requirement is "consistent with"—rather than dictated by—"United States Supreme Court decisions"). And Ms. Coates wholly ignores *Schoeff*, in which this Court expressly and clearly explained—in a separate section devoted to Florida law—that Florida law requires "a reasonable relationship" between "[p]unitive damages" and "compensatory

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[2] Ms. Coates wrongly suggests the district court improperly reviewed the trial court's Florida law ruling de novo. IBJ 8–9. In fact, the district court expressly noted that it was applying the abuse of discretion standard before concluding that the "enormity of the disparity between the punitive and compensatory damages awards" rendered approval of the punitive award an abuse of discretion. A.7, 11–12. Also, this argument is waived because Ms. Coates did not raise it in her motion for certification. Finally, whether the district court in this individual case properly applied the correct standard of review after identifying it is not the certified question, and indeed Ms. Coates never asked for it to be certified (presumably because it clearly is not a question of great public importance).

damages." *Schoeff*, 232 So. 3d at 308. Those decisions set out the governing rule of law in Florida, whatever earlier decisions may have said. *See* IBJ 9.

The remittitur statute also disproves Ms. Coates's position. That statute requires a court faced with a remittitur motion to "consider … [w]hether the amount awarded bears a reasonable *relation to the amount of damages proved* and the injury suffered." § 768.74(5)(d), Fla. Stat. (emphasis added). But Ms. Coates would have courts ignore the damages proved. *See* IBJ 10. The statutory text thus refutes Ms. Coates's statutory interpretation argument, which she in any event waived by failing to raise it until her rehearing petition in the district court. *Tillman*, 471 So. 2d at 34.

2. As for federal law, Ms. Coates contends that punitive damages must be compared with *potential* harm rather than the actual harm reflected in a compensatory-damages award. IBJ 10–11. But that approach would vitiate the guideline ratios articulated by the Supreme Court, because a plaintiff can always posit that the harm could have been greater. In reality, the relevance of "potential harm" is simply that a higher ratio is allowed in a rare and narrowly defined set of cases, such as cases where the harm to the plaintiff is

minimal only because the defendant's blameworthy conduct was thwarted. *See BMW*, 517 U.S. at 581; *accord TXO Prod. Corp. v. All. Res. Corp.*, 509 U.S. 443, 462 (1993).

In *Lawnwood Medical Center, Inc. v. Sadow*—on which Ms. Coates relies—the Fourth District applied this federal caselaw to conclude that the ratio requirement is relaxed where the defendant "acted willfully and with express malice to harm the plaintiff," but the plaintiff recovered no compensatory damages. 43 So. 3d 710, 725 (Fla. 4th DCA 2010). Right or wrong, that holding has no relevance here; Ms. Coates prevailed solely on a design defect claim and recovered non-nominal compensatory damages. And *Lawnwood* says nothing about the Florida law issue, as its analysis is expressly limited to federal law. *Id.* at 722.

3. Finally, Ms. Coates resorts to policy arguments. These arguments cannot overcome settled precedent, but they are unpersuasive even on their own terms. Ms. Coates argues that taking the ratio into account will lead to differing maximum punitive damages in cases involving "comparable injuries." IBJ 6, 8, 12–13. But it is question-begging to assert that the injuries are comparable. For example, to the extent Florida law allows greater damages to

plaintiffs in personal injury actions than to survivors in wrongful-death actions, that is a policy choice the Legislature is entitled to make.[3] And to the extent other wrongful-death survivors have recovered greater compensatory damages, that simply suggests those survivors demonstrated a greater injury to the jury.

Ms. Coates also worries (IBJ 13–14) that taking the ratio into account might uncouple punitive damages from the defendant's misconduct. But existing doctrine addresses this concern, both by making reprehensibility the primary factor, and by imposing a less rigid ratio where the plaintiff suffered minimal harm. *See Schoeff*, 232 So. 3d at 306–07; *Campbell*, 538 U.S. at 425.

C. The question is unfit for the Court's review.

In light of the above, this Court should not exercise jurisdiction over this issue. This Court is bound by Supreme Court decisions interpreting federal law—regardless of how much Ms. Coates may disagree with those decisions (IBJ 11–12). And the fact that Ms.

[3] Ms. Coates has waived any potential equal protection argument (IBJ 12–13) by failing to raise it until her rehearing petition. In any event, the Supreme Court has held that due process *requires* courts to consider the punitive-to-compensatory ratio; doing so cannot be unconstitutional.

Coates's position is foreclosed by federal law necessarily means that she has not raised an important state law issue; this Court does not render advisory opinions at the request of private litigants. *E.g.*, *Casiano v. State*, 310 So. 3d 910, 913 (Fla. 2021).

Ms. Coates disagrees, urging the Court to "overturn the district court's state-law holding so that [she] may seek review in the Supreme Court." IBJ 12. Ms. Coates waived this argument by failing to raise it in her motion for certification. And the argument is meritless: Clearing away a state-law ruling based on existing precedent so that a litigant can make a longshot effort to convince the U.S. Supreme Court to overturn its own precedent surely is not an issue of "great public importance." Unsurprisingly, Ms. Coates cites no case where this Court has rendered an advisory opinion simply to pave the way for potential Supreme Court review. Moreover, she makes no effort to demonstrate a plausible basis for Supreme Court review under Supreme Court Rule 10 (which sets out standards governing certiorari)—and indeed there is none.

In any event, Ms. Coates has not even expressly asked the Court to reconsider *Engle* and *Schoeff* on this issue. Much less has she shown that they are "clearly erroneous," as required for the

Court to consider overruling them. *State v. Poole*, 297 So. 3d 487, 507 (Fla. 2020).

II. This is not a question of "great public importance" because its practical significance is minimal.

The Court should deny review for the independent reason that the question presented has no significant practical consequences. Contrary to Ms. Coates's suggestion, intervention is not needed to clarify the "tobacco companies' potential exposure." IBJ 7.

First, there is currently complete clarity: As noted above, the issue is settled under both Florida and federal law.

Second, no plaintiff has a right to a particular amount of punitive damages—which serve public purposes of punishment and deterrence. *See Gordon v. State*, 608 So. 2d 800, 801 (Fla. 1992). And enormous ratios like the one here are vanishingly rare. Ms. Coates was able to identify only one Florida appellate decision involving a similar or greater ratio—*Lawnwood*—which is easily distinguishable as noted above. Moreover, unlike the 1997 version applicable here, the current Section 768.73 (in place since 1999) imposes strict caps on punitive damages in all cases save those in which "the fact finder determines that at the time of injury the

defendant had a specific intent to harm the claimant." § 768.73(1), Fla. Stat. So resolution of the certified question will have no broad impact.

Third, a ruling in Ms. Coates's favor would provide little guidance as to any defendant's exposure. It would merely remove one factor from an imprecise multifactor analysis.

In short, this Court should not consider this issue, because it is "a narrow issue with very unique facts," not a matter of great public importance. *Dade Cnty. Prop. Appraiser v. Lisboa*, 737 So. 2d 1078 (Fla. 1999).

CONCLUSION

This Court should decline jurisdiction.

DATED: May 21, 2021

/s/ Marie A. Borland

Troy A. Fuhrman
Florida Bar No. 985211
Marie A. Borland
Florida Bar No. 847984
Hill Ward Henderson
101 East Kennedy Boulevard,
Suite 3700
Tampa, FL 33601
Phone: (813) 221-3900
Facsimile: (813) 221-2900
troy.fuhrman@hwhlaw.com
marie.borland@hwhlaw.com

Charles A. Morse
Florida Bar No. 91561
Jones Day
250 Vesey Street
New York, NY 10281-1047
Phone: (212) 326-3939
cramorse@jonesday.com

Jason T. Burnette
Florida Bar No. 125200
Brian C. Lea
Florida Bar No. 1011371
Jones Day
1221 Peachtree Street, N.E.,
Suite 400
Atlanta, GA 30361
Phone: (404) 521-3939
jtburnette@jonesday.com
blea@jonesday.com

Counsel for Defendant/Respondent R.J. Reynolds Tobacco Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 21, 2021, I electronically filed the foregoing with the Clerk of the Court by using the Florida Courts E-Filing Portal.

I HEREBY FURTHER CERTIFY that on May 21, 2021, a true and correct copy of the foregoing was served by E-Mail on Appellee's counsel listed below.

Attorney for Petitioner:
William H. Ogle, Esq.
Parama K. Liberman, Esq.
OGLE LAW FIRM
444 Seabreeze Blvd., Suite 800
Daytona Beach, FL 32118
PH: 386-253-2500
oglelaw@gmail.com
PKLiberman@gmail.com
miranda@oglelawfirm.com
meri@oglelawfirm.com

Attorney for Petitioner:
Joshua R. Gale, Esq.
WIGGINS CHILDS PANTAZIS FISHER & GOLDFARB LLC
101 North Woodland Blvd., Suite 600
Deland, FL 32720
PH: 386-675-6946
jgale@wigginschilds.com
ttodd@wigginschilds.com

Attorney for Petitioner:
Andrew B. Greenlee, Esq.
ANDREW B. GREENLEE, P.A.
401 East 1st Street, Unit 261
Sanford, FL 32772
PH: 407-808-6411
andrew@andrewgreenleelaw.com
andrewbgreenlee@gmail.com

Attorney for Petitioner:
John S. Mills
Bishop & Mills, PLLC
1 Independent Drive, Suite 1700
Jacksonville, FL 32202
PH: 904-598-0034
jmills@bishopmills.com

Attorney for Petitioner:
Courtney Brewer
Jonathan A. Martin
Bailey Howard
Bishop & Mills, PLLC

325 North Calhoun Street
Tallahassee, Florida 32301
PH: 850-765-0897
cbrewer@bishopmills.com
jmartin@bishopmills.com
bhoward@bishopmills.com
service@bishopmills.com

s/ Marie A. Borland
Attorney for Respondent
R.J. Reynolds Tobacco Company

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this document complies with the applicable font and word count limit requirements of Florida Rule of Appellate Procedure 9.045 and Rule 9.210(a)(2)(A). The font is 14-point Bookman Old Style. The word count is 2498. It has been calculated by the word-processing system excluding the content authorized to be excluded under the rule.

DATED: May 21, 2021

/s/ Marie A. Borland
Counsel for Appellant
R.J. Reynolds Tobacco Company