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No. SC21-175
LT No. 5D19-2549; 481997CA004541A001OX

IN THE SUPREME COURT OF FLORIDA

BRINDA COATES,

Petitioner,

v.

R.J. REYNOLDS TOBACCO COMPANY,

Respondent.

ON DISCRETIONARY REVIEW FROM THE
FIFTH DISTRICT COURT OF APPEAL OF FLORIDA

AMICUS CURIAE BRIEF OF PHILIP MORRIS USA INC. IN SUPPORT OF APPELLEE R.J. REYNOLDS TOBACCO COMPANY

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IDENTITY AND INTEREST OF AMICUS CURIAE

Amicus curiae Philip Morris USA Inc. ("PM USA") is the leading manufacturer of cigarettes in the United States. Headquartered in Richmond, Virginia, PM USA was one of the original *Engle* defendants. Today—twenty-seven years after that case was filed—PM USA is a defendant in approximately 1,026 of the remaining *Engle* progeny cases, and in approximately 70 non-*Engle* cases like this one.

Given the volume of remaining litigation and the compensatory and punitive damages at stake, PM USA has a paramount interest in ensuring courts' faithful application of due process principles that prevent the imposition of arbitrary punishment. PM USA fully agrees with Respondent's arguments in support of the district court's remittitur of the $16 million punitive damages award in this case, including Respondent's arguments that the award is foreclosed both as a matter of Florida law and under the U.S. Constitution. PM USA submits this brief to highlight the untenable legal and practical consequences of Petitioner's arguments.

SUMMARY OF THE ARGUMENT

This Court should reject Petitioner's invitation to silently overrule foundational federal and Florida precedents and to permit the imposition of crippling punitive damage awards bearing no rational connection to the compensatory damages the jury has awarded.

I. The U.S. Supreme Court has long demanded "exacting appellate review" of punitive damages awards to ensure compliance with the Due Process Clause of the Fourteenth Amendment. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 417-18 (2003). An integral part of that exacting review is assessing "the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award." *Id.* at 418. This Court has construed Florida law to be "consistent" with federal law on this point. *Engle v. Liggett Grp., Inc.*, 945 So. 2d 1246, 1264 (Fla. 2006). Reviewing courts thus must ensure, both under federal law and independently under Florida law, that the jury was not permitted to punish a defendant based on harm to "nonparties," or based on "hypothetical claims." *See id.*; *Campbell*, 538 U.S. at 423. It is for that reason that this Court in *Engle* vacated a classwide punitive damages award—because the

trial court had adjudicated only compensatory damages for three bellwether cases, rather than determining the actual harm suffered by all members of the class. 945 So. 2d at 1264.

II. Petitioner disregards this framework. Indeed, she *admits* that her theory requires doing precisely what courts have forbidden: upholding a punitive damages award based on compensatory damages that would be available in other "hypothetical" cases that could be (or were) assessed by *other* juries. According to Petitioner, reviewing courts' ability to consider "actual or potential harm" (Pet. Br. 22) in reviewing punitive awards grants free-ranging authority to consider "hypothetical alternative verdicts" involving the facts of entirely different (or entirely fictional) cases. Pet. Br. 34, 58. Petitioner's approach violates not just the rationale but the direct holding of cases like *Engle*, which vacated a lump-sum award of punitive damages precisely because there was no basis for "compar[ing] the lump sum punitive damages amount to compensatory damages to ensure there is some reasonable relationship." 945 So. 2d at 1265. Under Petitioner's theory, there was no basis for reversing the punitive damage award in *Engle*. Petitioner's dismissiveness towards legal protections is unfounded,

and in any event provides no warrant for disregarding multiple controlling precedents from the U.S. Supreme Court and this Court.

III. Petitioner's unprecedented approach would invite crushing, arbitrary financial harm for defendant businesses—and not just in tobacco litigation. There are some 1,100 *Engle* progeny and other individual tobacco cases pending in Florida against PM USA alone. Punitive awards of $30 million—the *lower* end of Petitioner's suggested permissible amount—in even *half* of these cases would amount to $16.5 billion in total punitive damages. At the upper end of Petitioner's request, totals could easily exceed $50 billion. And based on compensatory awards in prior tobacco cases, individual punitive awards under Petitioner's theory could *routinely* exceed compensatory awards by ratios of 50:1 and even 100:1. The resulting scheme would fly in the face of the Supreme Court's admonition that "few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process." *Engle*, 945 So. 2d at 1264 (quoting *Campbell*, 538 U.S. at 424-26). And it would denigrate the particularized, fact-specific assessment of harm that juries must make in individual

cases, authorizing the same amount of punishment whether a jury awarded $1,000 or $10,000,000 to redress a plaintiff's actual harm.

A straightforward application of controlling precedent avoids these ruinous consequences and requires approving the decision below.

ARGUMENT

I. Punitive Damages Must Bear a Reasonable Relationship to Compensatory Damages Actually Awarded In a Particular Case

"Punitive damages pose an acute danger of arbitrary deprivation of property." *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 417 (2003) (quoting *Honda Motor Co. v. Oberg*, 512 U.S. 415, 432 (1994)). The U.S. Supreme Court has thus long interpreted the Due Process Clause of the Fourteenth Amendment to forbid awards of punitive damages that are "greater than reasonably necessary to punish and deter." *Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 22 (1991).

The Supreme Court has "instructed courts reviewing punitive damages to consider three guideposts: (1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the

punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases." *Campbell*, 538 U.S. at 418. The Court has "reiterated the importance of these three guideposts" and has "mandated appellate courts to conduct de novo review of a trial court's application of them to the jury's award." *Id.* The Court has "instructed courts reviewing punitive damages" to apply "[e]xacting appellate review" using these guideposts to "ensure[] that an award of punitive damages is based upon an 'application of law, rather than a decisionmaker's caprice.'" *Id.*

In *Engle*, this Court vacated a punitive damages award based on "the second guidepost," which it independently held was a requirement of Florida law. *Engle v. Liggett Grp., Inc.*, 945 So. 2d 1246, 1264 (Fla. 2006). This Court observed that its earlier precedent left open "whether punitive damages awards must bear some reasonable relation to compensatory damages." *Id.* But the Court then conclusively resolved that question, confirming that "a review of the punitive damages award" must "include[] an evaluation of the punitive and compensatory amounts awarded to ensure a reasonable relationship between the two." *Id.* In particular, this Court held that

courts must "ensure that the measure of punishment is both reasonable and proportionate to the amount of harm to the plaintiff and to the general damages recovered." *Id.* at 1265 (quoting *Campbell*, 538 U.S. at 424-26). *Engle* also agreed with the U.S. Supreme Court that punitive awards generally may not "exceed[] a single-digit ratio between punitive and compensatory damages." *Id.* at 1264 (quoting same).

Applying these principles, *Engle* held that punitive damages for an entire class could not be determined until "total compensatory damages [were] determined." *Id.* at 1265. The trial court had "allowed a lump sum determination of punitive damages for the entire class when compensatory damages had been determined only for the three individual class representatives." *Id.* In this Court's view, that approach did "not provide a reviewing court with an adequate starting point to compare the lump sum punitive damages amount to compensatory damages to ensure there is some reasonable relationship." *Id.* On this point, the otherwise fractured Court was

unanimous. *See id.*; *id.* at 1280-81 (Lewis, C.J., concurring in relevant part); *id.* at 1281 (Wells, J., concurring in relevant part).[1]

As cases like those cited in *Engle* make clear, a key reason for requiring a reasonable relationship between compensatory and punitive damages is to ensure that punitive damages do not punish defendants for conduct that has not harmed the particular plaintiff in the particular case. *Campbell*, for example, rejected the notion that a plaintiff may seek to base a punitive damage award on alleged injuries to third parties not before the court: "A defendant should be punished for the conduct that harmed the plaintiff, not for being an unsavory individual or business." 538 U.S. at 423. Due process thus "does not permit courts, in the calculation of punitive damages, to adjudicate the merits of other parties' hypothetical claims against a defendant under the guise of the reprehensibility analysis." *Id.*

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[1] In a case pending in this Court, PM USA has supported reconsideration of *Engle*'s separate, unrelated holding regarding claim preclusion. *See* Amicus Curiae Brief of Philip Morris USA Inc., *Prentice v. R.J. Reynolds Tobacco Co.*, No. SC20-291 (Dec. 10, 2020). PM USA has not challenged this Court's holding on punitive damages, which straightforwardly held that Florida law, consistent with U.S. Supreme Court precedent, requires comparing compensatory damages to punitive damages to ensure a reasonable relationship between the two.

Campbell also emphasized that "[p]unishment on these bases creates the possibility of multiple punitive damages awards for the same conduct." *Id.* Considering other cases and circumstances creates a risk of "'double count[ing]' by including in the punitive damages award some of the compensatory, or punitive, damages that subsequent plaintiffs would also recover." *Gore*, 517 U.S. at 593 (Breyer, J., concurring) (quoted with approval in *Campbell*, 538 U.S. at 423).

The U.S. Supreme Court later doubled down on *Campbell*'s rationale, eliminating any ambiguity about the constitutional rule: "the Constitution's Due Process Clause forbids a State to use a punitive damages award to punish a defendant for injury that it inflicts upon nonparties." *Philip Morris USA v. Williams*, 549 U.S. 346, 353 (2007). After *Williams*, courts must take steps to "protect against th[e] risk" that a jury will "punish the defendant for having caused injury to others." *Id.* at 357. That is true even if the defendant's actions that harmed others are not "dissimilar" to those in the instant case. *Id.* As the Court explained, "to permit punishment for injuring a nonparty victim would add a near standardless dimension to the punitive damages equation." *Id.* at 354. "And the fundamental due

process concerns to which our punitive damages cases refer—risks of arbitrariness, uncertainty, and lack of notice—will be magnified." *Id.*

II. Petitioner's Theory Flouts Controlling Precedent

In seeking to reinstate a punitive damages award that exceeded compensatory damages by an astounding multiple of 106.7:1, Petitioner openly disregards this established framework. In Petitioner's view, differences in the "individual circumstances" of a plaintiff's particular case "should have nothing to do with the amount of punishment warranted." Pet. Br. 21. The Supreme Court says the opposite: "The precise award in any case, of course, must be based upon the facts and circumstances of the defendant's conduct *and the harm to the plaintiff*." *Campbell*, 538 U.S. at 425 (emphasis added). Petitioner insists "it is **not** the amount of compensatory damages actually awarded that controls." Pet. Br. 59 (emphasis in original). Again, the Supreme Court says the opposite: "courts must ensure that the measure of punishment is both reasonable and proportionate to the amount of harm to the plaintiff and to the general damages recovered." *Campbell*, 538 U.S. at 426 (2003); *Gore*, 517 U.S. at 580 (comparing punitive damages to "the amount of

compensatory damages"). And Petitioner suggests that compliance with the first and third guideposts is sufficient even if the second guidepost suggests excessiveness. Pet. Br. 53. This Court says the opposite: under Florida law, the "second guidepost"—the relationship between punitive and compensatory damages—can be "determinative" regardless of how other factors would shake out. *Engle*, 945 So. 2d at 1264.

These fundamental inconsistencies between Petitioner's theory and controlling law would be reason enough to approve the decision below. But Petitioner's reliance on the facts of *other cases* (or even entirely "hypothetical" facts, Pet. Br. 34) to justify the punitive award here confirms that her approach strikes at the heart of the "concerns that led the Supreme Court to create the guideposts." Pet. Br. 53. In particular, Petitioner claims that because "*other juries*" have awarded higher compensatory damages in cases involving different facts, the jury's punitive damages award here was necessarily justified. Pet. Br. 63 (emphasis added); *see* Pet. Br. 58 (citing $10 and $15 million compensatory awards from prior cases). But *Williams* held that "punishing the defendant for harming persons who are not before the court" would "amount to a taking of 'property' from the

defendant without due process." 549 U.S. at 349. And while Petitioner points to "hypothetical alternative verdicts," involving other (or entirely imagined) plaintiffs, Pet. Br. 34, and asserts that the "wide range" in the "amount[] a jury *could* award" inherently justifies *any* amount of punitive damages, Pet. Br. 61, 63 (emphasis added), "[d]ue process does not permit courts" to base punitive damages awards on "hypothetical claims." *Campbell*, 538 U.S. at 423. Allowing consideration of injuries to "nonpart[ies]" in determining the punitive damages award adds "a near standardless dimension," thereby "magnif[ying]" the "risks of arbitrariness, uncertainty, and lack of notice." *Williams*, 549 U.S. at 354.

Indeed, Petitioner's reliance on other cases—actual and hypothetical—implicates another flaw *Campbell* identified. The Court there expressed "no doubt" that the Utah Supreme Court had acted impermissibly in affirming an enormous award on the ground that the harm caused was "massive *in the aggregate*," even if "minimal" as to the particular plaintiff. *Id.* (emphasis added). Petitioner's approach suffers from the same flaw. Juries in the other cases that she invokes already were permitted to impose punitive damage awards. *E.g.*, *Schoeff v. R.J. Reynolds Tobacco Co.*, 232 So. 3d 294, 307 (Fla. 2017)

($10 million in compensatory damages, $30 million in punitive damages); *see* Pet. Br. 58. Similarly, juries in cases with facts like the hypothetical ones Petitioner posits would have the same opportunity. *See* Pet. Br. 58 (hypothesizing case where Petitioner received $2.5 million in compensatory damages). But *this* jury may not impose $16 million in punitive damages based on verdicts in other actual or hypothesized cases, any more than a Utah jury could impose $145 million in punitive damages based on harm assessed "in the aggregate," divorced from the "minimal" harm the actual plaintiff suffered. *Campbell*, 538 U.S. at 423. Both approaches exacerbate "the possibility of multiple punitive damages awards for the same conduct." *Id.*

Petitioner's theory is likewise impossible to square with *Engle*'s treatment of punitive damages. Again, the trial court in *Engle* permitted "a lump sum determination of punitive damages for the entire class" despite having determined "compensatory damages … only for the three individual class representatives." 945 So.2d at 1265. Under Petitioner's analysis, that approach would have been perfectly sound. The class representatives' compensatory damages would have stood as exemplars of "*potential* awards" (Pet. Br. 58) that

a jury could potentially enter in each of the class cases, supporting punitive damages up to some reasonable multiple of those exemplars. Yet this Court forbade that approach, recognizing it was in direct conflict with the U.S. Supreme Court's due process holdings (as well as with Florida law this Court has held to independently impose these safeguards). *Id.* at 1264. The problem was that the trial court's approach did not permit comparison of the "punitive damages amount to compensatory damages to ensure there is some reasonable relationship"—a comparison demanded by Florida law and due process. *Id.* at 1265. This Court confirmed, decisively, that comparisons of compensatory and punitive damages awards must be specific to the facts of the actual plaintiff's case.

According to Petitioner, reviewing courts' ability to consider "actual or potential harm" (Pet. Br. 22) in conducting due process review grants courts free-ranging authority to consider "hypothetical alternative verdicts" involving the facts of entirely different (or entirely fictional) cases. Pet. Br. 34, 58. That position is baseless. As Respondent explains, the decisions focusing on "potential harm" involved rare situations where grave harm was *thwarted*. Resp. Br. 46-47; *see generally TXO Prod. Corp. v. All. Res. Corp.*, 509

U.S. 443, 460 (1993) (plurality opinion) (can consider "the potential harm that the defendant's conduct would have caused to its intended victim if the wrongful plan had succeeded"). But no court has ever taken that to mean that a reviewing court may approve punitive awards based on verdicts in other cases, much less on "hypothetical alternative verdicts" based on imagined facts. Petitioner's contrary understanding would effectively eliminate due process protections, as greater potential harm can always be hypothesized—a truth confirmed by Petitioner's admission that "there should be no limit to the acceptable ratio in a case like this." Pet. Br. 63. And if "potential harm" includes harm to *other plaintiffs* (even hypothetical plaintiffs), as Petitioner suggests, then there would have been no due process issue in *Campbell* or in *Williams*. In those cases, "potential" harm to other plaintiffs, whether actual or hypothetical, would have amply justified the punitive award that the Court vacated. *Supra* pp. 12-13. But that was not sufficient. Rather, the U.S. Supreme Court could hardly have been clearer: The law requires evaluating the relationship between harm actually "suffered *by the plaintiff* and the punitive damages award." *Campbell*, 538 U.S. at 418 (emphasis added). This Court has been equally clear. *See Engle*, 945 So. 2d at

1264 ("[A] review of the punitive damages award includes an evaluation of the punitive and compensatory amounts awarded to ensure a reasonable relationship between the two.").

What is left of Petitioner's theory is her suggestion the U.S. Supreme Court's due process decisions were wrong and should be given the narrowest possible reading. Pet. Br. 44-47. That of course does not speak to Florida law, which as Respondent correctly argues independently requires that punitive awards bear a reasonable relationship to compensatory damages. Resp. Br. 16-37. And even as to due process, Petitioner's extensive reliance on dissenting opinions (Pet. Br. 45-47) makes clear that her critiques are no different from those repeatedly rejected by Supreme Court majorities for decades. *See Georgia v. Public.Resource.Org., Inc.*, 140 S. Ct. 1498, 1511 (2020) ("Comments in a dissenting opinion about legal principles and precedents are just that: comments in a dissenting opinion.") (cleaned up). These arguments have been rejected for good reason. Guarding against excessive, arbitrary punitive damage awards is not some "*Lochner*-era" "discover[y]," as Petitioner suggests. Br. 45, 50. Rather, "[t]he principle that exemplary damages must bear a 'reasonable relationship' to compensatory damages has a long

pedigree." *Gore*, 517 U.S. at 580 & n.32 (collecting nineteenth-century authorities, including *Grant v. McDonogh*, 7 La. Ann. 447, 448 (1852) ("[E]xemplary damages allowed should bear some proportion to the real damage sustained.")).

In any event, this is no place for relitigating longstanding U.S. Supreme Court constitutional precedent, which Petitioner has not asked (and could not ask) this Court to overrule. The decision below does not depend on even incremental extension of controlling precedent. Petitioner's generalized skepticism of what she characterizes as "substantive due process" cannot justify disregarding controlling decisions holding that comparisons between compensatory and punitive damages must be tailored to the specific facts of the case. A straightforward application of those cases requires approving the decision below.

III. Petitioner's Unprecedented Theory Threatens Crushing, Arbitrary Liability

Petitioner's theory would cause not just doctrinal discord, but economic havoc. Petitioner's view is that, in each and every wrongful-death tobacco case in Florida, a jury would be justified in imposing a punitive damages award of "no lower than … $30 million," and

potentially "at least $100 million," no matter the amount of actual damages awarded. Pet. Br. 65.

A survey of the 217 plaintiff-side jury verdicts in Florida tobacco cases as of January 2022 illustrates the potentially catastrophic and arbitrary consequences of this request.[2] Juries in these cases have awarded an astronomical total of over $1,116,000,000 in compensatory damages—an average of over $5 million per verdict. But juries have varied widely in their assessment of actual harm in individual cases. Fifty of the compensatory awards have been for $1 million or less, and over twenty-five have been for $500,000 or less. Many of these awards were reduced after trial or on appeal, often to a fraction of their original amount.[3]

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[2] This survey, included as an Appendix to this brief, includes all Florida tobacco cases where a jury has entered a verdict against a defendant manufacturer, even if currently on appeal. The cited values for compensatory or punitive damages are the values as awarded by the jury, not accounting for any reduction or reversal of damages awards on appeal.

[3] *See, e.g.*, *Gordon v. R.J. Reynold Tobacco Co.* ("RJR"), No. 2013-1552 (Charlotte Cty. Cir. Ct.); *Duke v. RJR*, No. 3:09-cv-10104 (M.D. Fla.); *Frogel v. PM USA*, No. 50:2007-23246 (Palm Beach Cty. Cir. Ct.); *Giddens v. RJR*, No. 3:09-cv-13590 (M.D. Fla.); *Kirkland v. RJR*, No. 2008-678 (Hillsborough Cty. Cir. Ct.); *Odum v. RJR*, No. 16-2007-11175 (Duval Cty. Cir. Ct.); *Sulcer v. Lorillard Tobacco Co.*, No. 2007-

The wide variation in these compensatory awards reflects a tenet of our tort system: even seemingly similar injuries can cause vastly different amounts of harm to different plaintiffs. In wrongful-death cases, for example, the relationship between the plaintiff and the decedent is significant. Petitioner recognizes this: A "surviving spouse" may receive higher damages than a plaintiff in a case where decedent "had gotten divorced and left no spouse or young children behind." Pet. Br. 1.

2540 (Escambia Cty. Cir. Ct.); *Ewing v. RJR*, No. 2009-2791 (Escambia Cty. Cir. Ct.); *Hatziyannakis v. PM USA*, No. 2007-26751 (Broward Cty. Cir. Ct.); *Walker v. RJR*, No. 3:09-10598 (M.D. Fla.); *Zamboni v. RJR*, No. 3:09-cv-11957 (M.D. Fla.); *Quackenbush v. RJR*, No. 2007-12188 (Volusia Cty. Cir. Ct.); *Rozar v. RJR*, No. 16-2017-4311 (Duval Cty. Cir. Ct.); *Russ v. RJR*, No. 2015-42 (Gadsden Cty. Cir. Ct.); *Jones v. RJR*, No. 1997-4966 (Hillsborough Cty. Cir. Ct.); *Starr v. RJR*, No. 16-2007-12167 (Duval Cty. Cir. Ct.); *Clayton v. RJR*, No. 16-2007-11175 (Duval Cty. Cir. Ct.); *Arnitz v. PM USA*, No. 2000-2408 (Hillsborough Cty. Cir. Ct.); *Huish v. RJR*, No. 2008-3714 (Alachua Cty. Cir. Ct.); *Boulter v. RJR*, No. 2008-627 (Lee Cty. Cir. Ct.); *Lewis v. RJR*, No. 2009-30058 (Volusia Cty. Cir. Ct.); *Hardin v. RJR*, No. 2012-29000 (Miami-Dade Cty. Cir. Ct.); *Goveia v. RJR*, No. 2008-760 (Orange Cty. Cir. Ct.); *Lawrence v. RJR*, No. 2009-178 (Marion Cty. Cir. Ct.); *Webb v. RJR*, No. 2009-1285 (Levy Cty. Cir. Ct.); *Ward v. RJR*, No. 2008-2135 (Escambia Cty. Cir. Ct.); *Simon v. RJR*, No. 2007-27976 (Broward Cty. Cir. Ct.); *Mack v. RJR*, No. 2008-3256 (Alachua Cty. Cir. Ct.); *Koballa v. RJR*, No. 2007-33334 (Volusia Cty. Cir. Ct.).

Under Petitioner's approach, these differences are irrelevant. A jury in every tobacco case thus far, no matter the actual damages, could have imposed tens if not hundreds of millions of dollars in punitive damages. Given that dozens of compensatory awards in these cases have been less than $1 million, the punitive-to-compensatory ratio in these cases could routinely have been in the double digits—often exceeding 50:1, sometimes 100:1.[4] All of this despite the Supreme Court's repeated admonitions that "few awards exceeding a single-digit ratio between punitive and compensatory damages .... will satisfy due process," and that punitive damages "more than four times the amount of compensatory damages might be close to the line of constitutional impropriety." *Campbell*, 538 U.S. at 425; *see Williams*, 549 U.S. at 353 (citing *Campbell* for proposition that "excessiveness [is] more likely where ratio exceeds single digits"); *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 514-15 (2008) (citing *Campbell* for proposition that due process prohibits awards

[4] *See, e.g.*, *Quackenbush*, *supra* note 3 ($358,152 in compensatory damages reduced to $71,630); *Kirkland*, *supra* note 3 ($100,000 in compensatory damages reduced to $10,000).

exceeding single-digit ratios in "all but the most exceptional of cases").

The financial consequences could be astounding. Just taking the 217 verdicts in plaintiffs' favor as of this filing, had a jury imposed even $30 million in punitive damages—the *lower* end of Petitioner's proposed cap—the current total punitive damages in Florida alone would stand at nearly $6.7 billion. And these past verdicts represent only a fraction of the remaining tobacco cases in this State. There are approximately 1,100 *Engle* progeny and individual cases that remain pending in Florida against PM USA alone. If juries imposed $30 million awards in even *half* of these cases, defendants would be liable for $16.5 billion in punitive damages, regardless of the amount of compensatory damages awarded. And again, $30 million is Plaintiff's *lowest* proposed ceiling; in her view, "the maximum award should be at least $100 million." Pet. Br. 65. If that figure were imposed in even half the remaining cases against PM USA, the total punitive damages from Florida cases alone would be approximately $55.5 billion.

These numbers are staggering even in isolation. And while Florida is the national leader in tobacco litigation, these state-specific

numbers do not paint the full picture.[5] As of October 2021, and excluding the thousand-plus *Engle* progeny cases, there were 179 smoking-related cases pending against PM USA nationwide.[6] Under Petitioner's theory, so long as the jury in any given case "awarded just one dollar" in compensatory damages, there would be no protection against enormous punitive damages awards. Pet. Br. 63. But as decades of decisions from the U.S. Supreme Court and this Court make clear, that is not the law.

CONCLUSION

This Court should approve the district court's decision.

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[5] PM USA had already paid over $177 million in punitive awards in other states. *See Boeken v. PM USA*, No. BC 226593 (Calif. Super. Ct.) ($50,000,000); *Bullock v. PM USA*, No. BC249171 (Calif. Super. Ct.) ($13,800,000); *Henley v. PM USA*, No. 995172 (Calif. Super. Ct.) ($9,000,000); *Schwarz v. PM USA*, No. 0002-1376 (Ore. Cir. Ct.) ($25,000,000); *Williams v. PM USA*, No. 9705-3957 (Ore. Cir. Ct.) ($79,500,000).

[6] Altria Grp., Inc., Form 10-Q, at 30 (Oct. 28, 2021), https://s25.q4cdn.com/409251670/files/doc_financials/2021/q3/2021-FORM-10Q-(Q3-2021)-10.28.21-FINAL.pdf.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 10, 2022, this brief was electronically filed with the Clerk of the Court using the Florida Courts E-Portal Filing System, which will send a notice of electronic filing to counsel for the parties.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the word limitation requirement of Florida Rule of Appellate Procedure 9.370(b) because it contains 4,292 words, exclusive of the elements not counted under Rule 9.045(e). I further certify that this brief complies with the typeface requirements of Florida Rule of Appellate Procedure 9.210(a)(2), because it was prepared in 14-point Bookman Old Style.

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