No. 18-621

In The
Supreme Court of the United States

R.J. REYNOLDS TOBACCO CO., et al.,

Petitioners,

v.

MARY FARICY PARDUE, as
Personal Representative of the
Estate of John N. Faricy,

Respondent.

**On Petition For A Writ Of Certiorari To
The Florida First District Court Of Appeal**

BRIEF IN OPPOSITION

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QUESTION PRESENTED

The question framed in the petition is not presented in this case. The only due process question actually presented is whether a defendant has the right to relitigate the meaning of a partial verdict that ultimately contributed to a final judgment between the same parties involving the same claims when the judgment is reversed for further proceedings on those claims, where the appellate court expressly determined the meaning of the partial verdict and how it would be applied during proceedings on remand.

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BRIEF IN OPPOSITION

Mary Faricy Pardue, as personal representative of the estate of her deceased husband John Faricy, respectfully submits that the Court should promptly deny the petition for writ of certiorari filed by R.J. Reynolds Tobacco Company and Philip Morris USA Inc. and deny their request to delay disposition of this petition pending disposition of subsequent petitions.

First, the question Petitioners seek to present to this Court was not adequately presented to the state courts below, so it is not preserved here. In neither their initial brief on appeal below nor their petition here have Petitioners identified a trial court ruling on the due process issue. Thus, regardless of whether the trial court ever ruled on the issue, it was not preserved for appellate review.

Second, that question is not presented by the facts of this case in any event. Even if one were to accept Petitioners' answer to the question they seek to present, the judgment under review would remain valid because the Florida Supreme Court did, in fact, determine that the subject elements were decided in petitioner's favor by the jury in the class action trial. The only due process question that is actually presented in this case is whether the Due Process Clause gives a defendant the right to relitigate the meaning of a verdict that resulted in a final judgment between the same parties involving the same claims when the judgment is reversed for further proceedings on those claims, but the appellate court expressly determined the meaning of the verdict and how it would be applied

during proceedings on remand. There are no reasons to grant certiorari on this question or any other iteration of it as there is no split of authority and no important, debatable issue of federal law warrants this Court's review. There is no claim that Petitioners did not have adequate notice and opportunity to be heard.

Third, Petitioners' request that the Court hold this petition pending resolution of petitions they subsequently filed should be rejected as not only unsupported by precedent, but also as an abuse of the writ.

COUNTERSTATEMENT OF THE CASE

Philip Morris has raised the same issue in *Philip Morris USA Inc. v. Jordan*, No. 18-551, and *Philip Morris USA Inc. v. Brown*, No. 18-552. The petition in this case is not materially distinguishable from the petitions in those cases, so if those petitions are denied by the time the Court takes up this petition, it should deny relief here for the same reasons. Indeed, the rest of this brief is materially identical to the brief in opposition filed by the undersigned in *Jordan*.

As in each of the **twenty-four times** R.J. Reynolds and/or Philip Morris have unsuccessfully petitioned this Court for certiorari on the same due process challenge to the Florida Supreme Court's holding in *Engle v. Liggett Group, Inc.*, 945 So. 2d 1246 (Fla. 2006),[1] the dispute between the parties is less about

[1] It will be twenty-six prior times if the Court has denied certiorari in *Jordan* and *Brown* by the time it considers this brief.

the resolution of any issue of constitutional law than it is a dispute over the factual history of this litigation.

Respondent disputes Petitioners' account of the class phase of this case. Because Petitioners never made an appellate record of raising this issue in the trial court below,[2] there are no record documents about

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The prior twenty-four denials are *R.J. Reynolds Tobacco Co. v. Graham*, 138 S. Ct. 646 (2018); *R.J. Reynolds Tobacco Co. v. Grossman*, 138 S. Ct. 748 (2018); *Philip Morris USA Inc. v. Naugle*, 138 S. Ct. 735 (2018); *R.J. Reynolds Tobacco Co. v. Turner*, 138 S. Ct. 736 (2018); *R.J. Reynolds Tobacco Co. v. Block*, 138 S. Ct. 733 (2018); *R.J. Reynolds Tobacco Co. v. Monroe*, 138 S. Ct. 923 (2018); *R.J. Reynolds Tobacco Co. v. Lewis*, 138 S. Ct. 923 (2018); *Philip Morris USA Inc. v. Lourie*, 138 S. Ct. 923 (2018); *R.J. Reynolds Tobacco Co. v. Walker*, 134 S. Ct. 2727 (2014); *Philip Morris USA, Inc. v. Barbanell*, 134 S. Ct. 2726 (2014); *R.J. Reynolds Tobacco Co. v. Brown*, 134 S. Ct. 2726 (2014); *R.J. Reynolds Tobacco Co. v. Kirkland*, 134 S. Ct. 2726 (2014); *R.J. Reynolds Tobacco Co. v. Mack*, 134 S. Ct. 2726 (2014); *Lorillard Tobacco Co. v. Mrozek*, 134 S. Ct. 2726 (2014); *R.J. Reynolds Tobacco Co. v. Koballa*, 134 S. Ct. 2727 (2014); *R.J. Reynolds Tobacco Co. v. Smith*, 134 S. Ct. 2727 (2014); *R.J. Reynolds Tobacco Co. v. Sury*, 134 S. Ct. 2727 (2014); *R.J. Reynolds Tobacco Co. v. Townsend*, 134 S. Ct. 2727 (2014); *Philip Morris USA, Inc. v. Douglas*, 134 S. Ct. 332 (2013); *R.J. Reynolds Tobacco Co. v. Clay*, 133 S. Ct. 650 (2012); *R.J. Reynolds Tobacco Co. v. Gray*, 132 S. Ct. 1810 (2012); *R.J. Reynolds Tobacco Co. v. Hall*, 132 S. Ct. 1795 (2012); *R.J. Reynolds Tobacco Co. v. Campbell*, 132 S. Ct. 1795 (2012); *R.J. Reynolds Tobacco Co. v. Martin*, 132 S. Ct. 1794 (2012); *R.J. Reynolds Tobacco Co. v. Engle*, 552 U.S. 941 (2007).

[2] The Petitioners erroneously stated, "A CD containing the transcripts and all other record materials from *Engle* cited herein is part of the record below." (Petition 6 n.1.) This is not true. When the undersigned counsel asked Petitioners' counsel to provide the basis for this representation, Petitioners' counsel conceded the CD was never put in the record below and promised to send a letter to the Court correcting their error.

most of the procedural history of this case during its class phases to include in the appendix hereto. The few citations Petitioners provide in their petition are not to the record in this case. Accordingly, if the Court were to grant certiorari and consider the merits of the question Petitioners seek to present, it would have to allow the parties to go beyond the record below and provide materials from the hundreds of thousands of pages of record generated in the class proceedings. Here is what those documents would ultimately demonstrate:

Respondent is a member of the class defined in a class action complaint filed in Florida state court in 1994 against Philip Morris and some other major cigarette manufacturers that asserted claims for strict liability, negligence, fraud, and conspiracy to commit fraud as well as other claims not at issue here.

After class certification was affirmed on interlocutory appeal, there was a year-long jury trial on the issues the trial court determined were common to the class, followed by trials on the individual elements of three class representative claims and punitive damages for the class.

Petitioners had full notice and an opportunity to be heard on the issues to be tried during that phase as well as on the phrasing of the special verdict form to be used and the jury instructions to be given. All parties were well aware that the purpose of the verdict was to resolve liability elements that were common to all class members' claims so that follow up trials with different juries would only address the remaining individual issues.

After the jury returned a special verdict largely in favor of the class, Petitioners had full notice and an opportunity to be heard in the trial court on the meaning and effect of the jury's verdict. After two further trial phases, after which Petitioners again had full notice and opportunity to be heard on the meaning and effect of the original verdict, the trial court entered a final judgment for $145 billion in punitive damages for the class and $12.7 million in compensatory damages for the three class representatives.

After an intermediate appellate court reversed the judgment in total, the Florida Supreme Court granted review, approved the original decision to certify the class, affirmed the compensatory damage awards to the class representatives, reversed the award of punitive damages to the class as both premature and excessive, and held that each class member would have to prove their claims in individual proceedings to follow.

During this appeal, Petitioners again had full notice and opportunity to be heard on the meaning and effect of the jury's original findings. The Florida Supreme Court reviewed each finding and determined which findings applied to all class members and which findings were not common to the class.

In its initial opinion, the Florida Supreme Court determined that several findings were common to the class, while others were too generalized to be applied on a class-wide basis. Concluding that the remaining issues to be resolved on remand were too individualized for continued class treatment, the court

decertified the class and gave class members one year to file individual actions to complete the litigation of their claims. It held that the findings it had approved as common to the class would have "res judicata effect" in those further proceedings on remand.

Petitioners and the other defendants sought rehearing, arguing that some of the findings that had been approved were not common to the class. The court granted rehearing in part and changed its ruling as to some, but not all of the approved findings.

The finally approved findings at issue here are that Petitioners were negligent, that their cigarettes were unreasonably dangerous (the liability element on the strict liability claim), that they had fraudulently concealed the dangers of their cigarettes, and that they had conspired with others to fraudulently conceal those dangers. The findings that the Florida Supreme Court held were too individualized to have res judicata effect included findings that Petitioners had made fraudulent misrepresentations about the dangers of their cigarettes and had conspired with others to make such fraudulent misrepresentations.

Petitioners and the other defendants sought certiorari in this Court raising essentially the same due process challenge raised here. This Court denied certiorari.

Turning to matters that at least were reflected in the record on appeal below, Respondent instituted these individual proceedings on remand through an *Engle*-progeny complaint filed in Florida state court.

She offered to settle her claims for $240,000, but both Petitioners refused. After a two-week trial in 2016, the jury concluded that (1) Respondent had proven that she was a class member entitled to prevail on her negligence and strict liability claims because her husband had developed heart disease and chronic obstructive pulmonary disorder ("COPD") as a result of becoming addicted to smoking Petitioners' cigarettes, and (2) Respondent had proven that her husband reasonably relied to his detriment on the fraudulent concealment of the dangers of smoking by each Petitioner individually as well as the concealment by their conspiracy. (R:11,963-65.) It determined that Respondent's husband was also negligent and apportioned twenty-five percent of the fault to him, fifty percent to Philip Morris, and twenty-five percent to R.J. Reynolds. (R:11,965.) It awarded $5,200,601.66 in compensatory damages and, after an additional day of trial, $6,750,000 in punitive damages against each defendant. (R:11,966-67, 11,987.)

Petitioners appealed the resulting judgment to the Florida First District Court of Appeal, which affirmed without elaboration. They raised several issues on appeal, but the only due process argument they made was as follows (quoting it in its entirety):

> Defendants preserve their position that the application of the *Engle* findings to establish the conduct elements of Plaintiff's claims violated their due process rights because it is impossible to determine whether the *Engle* jury resolved anything relevant to Professor

> Faricy. *See Fayerweather v. Ritch*, 195 U.S. 276, 307 (1904). Defendants also preserve their claim that Plaintiff's strict liability and negligence claims are impliedly preempted. Although the Florida Supreme Court has rejected these arguments, Defendants preserve them for review by the U.S. Supreme Court. Defendants recently filed a petition for certiorari addressing both of these issues. See Pet. for Writ of Certiorari, *R.J. Reynolds Tobacco Co. v. Graham*, No. 17-A74 (filed Sept. 15, 2017).

(Initial Brief at 49.) If Defendants believed they had raised this issue anywhere in the more than 5000-page record on appeal, it did not advise the appellate court. Indeed, their brief below did not reference any ruling by the trial court on this issue.

REASONS FOR DENYING THE PETITION

I. Petitioners Did Not Preserve Any Due Process Issue Below.

At no point in either the petition before this Court or the initial brief filed in the state appellate court below have Petitioners preserved a due process argument by pointing to any ruling by the trial court on the due process claim they seek to make here. Indeed, the record in this case does not include even excerpts from the record of the class proceedings. For this Court to address the merits of the issue Petitioners seek to have it review, it would have to go beyond the record

and look at the hundreds of thousands of pages of transcripts and filings that were not presented to the court below.

This Court's Rule 14.1(g)(i) required Petitioners to specify the "stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised," including the "method or manner of raising them and the way in which they were passed on by those courts . . . with specific references to the places in the record where the matter appears . . . so as to show that the federal question was timely and properly raised." Florida's preservation law and procedural rules similarly require the appellant to brief how an issue was raised in and disposed of in the trial court with record citations and to provide more than "only conclusory argument" to preserve an argument for appellate review. Fla. R. App. P. 9.210(b)(3), (5); *Hammond v. State*, 34 So. 3d 58, 59 (Fla. Dist. Ct. App. 2010); *see also Hamilton v. R.L. Best Int'l*, 996 So. 3d 233, 235 (Fla. Dist. Ct. App. 2008) ("It is the decision of the lower tribunal that is reviewed on appeal, not the issue.").

Even if Petitioners were to identify a trial court ruling on this issue in their reply, the fact remains that they never identified, much less challenged, that ruling in the appellate court below. Florida courts have made clear that they only review specific rulings by trial courts and not simply abstract issues. *Hamilton*, 996 So. 3d at 235.

In short, because Petitioners did not adequately preserve a due process argument in the lower courts,

this Court should deny certiorari even if it otherwise found the question to be worthy of review. *See, e.g.*, *Wood v. Milyard*, 566 U.S. 463, 473 (2012) ("For good reason, appellate courts ordinarily abstain from entertaining issues that have not been raised and preserved in the court of first instance."); *United States v. Jones*, 565 U.S. 400, 413 (2012) (arguments not preserved below are forfeited); *Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 194 (2007) (declining to consider claims not considered below).

II. The Only Due Process Issue Arguably Presented by the Facts of This Case Is Not Worthy of Certiorari Review.

Even if Petitioners had made the same arguments in the courts below as they make here, certiorari would still be unwarranted. As an initial matter, the question phrased in the petition regarding elements of Respondent's claims – whether due process requires a "showing that those elements were actually decided in her favor in the prior proceeding" – is not even presented in this case. Even assuming Petitioners are correct that their question should be answered in the affirmative, their rights were not violated because Respondent can easily make such a showing.

After all parties, including both Petitioners, had full notice and opportunity to be heard at every turn in the trial court, intermediate court of appeals, and Florida Supreme Court, the latter court reviewed the hundreds of thousands of pages of appellate record

and determined that the jury's findings did, in fact, satisfy the common elements of all class members' claims. This was no "possibility that the relevant issues might have been decided in the plaintiff's favor," as Petitioners now claim. It was a finding that the issues were, in fact, decided in favor of each and every class member.

This was far from a complete victory for the class. Not only did the court fully reverse the award of punitive damages, it also held that some of the jury's findings were insufficient to establish those elements. For example, it held that the jury's findings that the defendants made fraudulent misrepresentations was not common to every member of the class for the obvious reason that not all class members could have heard each misrepresentation and thus depended on "highly individualized determinations." *Engle*, 945 So. 2d at 1255, 1269.

On the other hand, it approved the fraudulent concealment findings because they did not rely on specific fraudulent statements, but instead simply relied on the jury's necessary conclusion that "the tobacco companies had a duty to disclose" the dangers they knew their cigarettes posed. *R.J. Reynolds Tobacco Co. v. Martin*, 53 So. 3d 1060, 1067-68 (Fla. Dist. Ct. App. 2011), *cert. denied*, 566 U.S. 905 (2012); *accord Philip Morris USA, Inc. v. Duignan*, 243 So. 3d 426, 443 (Fla. Dist. Ct. App. 2017).

To be sure, Petitioners continue to disagree with the Florida Supreme Court's determinations in *Engle*

by contending that the negligence and strict liability findings might not have been common to all class members because they might have only applied to certain kinds of cigarettes but not others. And they continue to speculate that the fraudulent concealment findings might not have been common to all class members because they might have involved concealing information only relevant to certain kinds of cigarettes. The point is that this was a dispute that was resolved between these very parties (Respondent as a member of the *Engle* class) in the litigation of the same claims on which the judgment below is based.

Petitioners cite no case that would require a party be given the opportunity to relitigate these kinds of issues after the highest appellate court with jurisdiction has made its final ruling. Instead, it should be clear that when a party had notice and opportunity to be heard, there is no due process violation no matter how forcefully a party contends the ruling was erroneous. This is the reason that the Florida Supreme Court and the Eleventh Circuit Court (sitting en banc, no less) rejected the due process challenge Petitioners continue to bring to this Court again and again and again. *Philip Morris USA, Inc. v. Douglas*, 110 So. 3d 419, 430-36 (Fla.), *cert. denied*, 571 U.S. 889 (2013); *Graham v. R.J. Reynolds Tobacco Co.*, 857 F.3d 1169, 1181-86 (11th Cir. 2017) (en banc), *cert. denied*, 138 S. Ct. 646 (2018); *see also Burkhart v. R.J. Reynolds Tobacco Co.*, 884 F.3d 1068, 1090-93 (11th Cir. 2018) (Tjoflat, J.) (dissenter in *Graham* explaining why *Graham*'s due process holding controls as to all findings the Florida

Supreme Court determined in *Engle* satisfied conduct elements of all class members' claims).

The court's statement in *Douglas* that the findings would be "useless" if the court had meant issue preclusion, 110 So. 3d at 433, does not mean, as Petitioners suggest, that the court had been unable to determine from the record of the year-long *Engle* Phase I trial whether the findings applied to all cigarettes manufactured by the defendants. Rather, it clearly meant that they would be useless in terms of saving any time and effort to avoid relitigation in the progeny actions because each class member would be "required to 'trot out the class action trial transcript to prove applicability of the phase I findings.'" *Id.* (quoting *Martin*, 53 So. 3d at 1067). *Douglas* simply made clear that this issue had already been fully litigated and decided against Petitioners in *Engle* and, therefore, was not subject to relitigation in each progeny case on remand.

Whether the doctrine is labeled issue preclusion, claim preclusion, res judicata, law of the case, or anything else, the fact remains that this dispute was fully litigated by these parties and finally resolved against both Petitioners. *See Walker v. R.J. Reynolds Tobacco Co.*, 734 F.3d 1278, 1289 (11th Cir. 2013) ("If due process requires a finding that an issue was actually decided, then the Supreme Court of Florida made the necessary finding. . . ."), *cert. denied*, 134 S. Ct. 2727 (2014).

There is simply no good reason for this Court to use its resources to address this issue. There is no split of authority period, much less between federal courts

of appeals and/or state courts of last resort. And the issue is limited to *Engle*-progeny litigation, in any event. This is a finite group of claims. All but a handful of federal *Engle*-progeny cases have been fully resolved, by settlement or adjudication.

Nor is there anything all that remarkable about the *Engle* court's rationale once one understands that the class trial was not some separate prior proceeding, but merely the first phase of this litigation between Respondent and Petitioners. *Engle* reviewed a final judgment; there is nothing unusual about applying res judicata effect to the findings that were affirmed in favor of the class. While the class was decertified and class members were directed to file progeny actions to complete their individual claims, the fact remains that not only were Petitioners parties to the *Engle* final judgment, but so, too, was each class member, including Respondent. *See Soffer v. R.J. Reynolds Tobacco Co.*, 187 So. 3d 1219, 1224 (Fla. 2016) (approving observation in lower court opinion (that was otherwise quashed) that "[p]rogeny plaintiffs wear the same shoes, so to speak, as the plaintiff in *Engle* because they are the plaintiffs from *Engle*"); *Douglas*, 110 So. 3d at 432 ("[O]ur decision in *Engle* allowed members of the decertified class to pick up litigation of the approved six causes of actions right where the class left off. . . .").

And while the class action and progeny actions were different proceedings in the sense that they have separate case numbers, each progeny action merely asserts the same causes of action asserted and partially resolved by *Engle*. Thus, there is nothing unusual or

inappropriate about affording the affirmed parts of the judgment with res judicata effect and precluding further litigation on these common issues between the same parties involving the same causes of action.

This is no different than an individual case where the appellate court affirms part of the judgment but reverses another part for a new trial only on the remaining issues while making clear that the affirmed issues may not be relitigated on remand. The court rejected the dissent's concern that this would involve subsequent juries re-examining findings made by the original jury. *Compare* 945 So. 2d at 1270, *with id.* at 1286-87 (Wells, J., dissenting in part). And it plainly resolved with finality the question of which *Engle* findings applied uniformly to all class members and which depended on the kind of cigarette each class member smoked or the statements each class member heard. Petitioners challenged that determination in this Court raising the same due process question urged here, and the Court denied their petition and then denied rehearing. 552 U.S. 941.

Regardless of whether Petitioners wanted to accept those determinations, that should have been the end of the litigation on this issue because even the traditional doctrine of claim preclusion applies to subsequent litigation between the same parties on the same causes of action. *Douglas*, 110 So. 3d at 433. Issue preclusion, on the other hand, prevents the same parties from relitigating the same issues that were litigated and actually decided in a second suit involving a different cause of action. Applying that doctrine here – to the same

causes of action from the class action as opposed to a different cause of action – would be improper, as the supreme court found. *Id.* (citation omitted).

At bottom, Petitioners claim a due process right to relitigate the meaning of a verdict finally adjudicated in a prior appellate proceeding that resulted in a final judgment between the same parties involving the same claims. Petitioners essentially ask this Court to review the hundred-thousand-page record from *Engle*, including the nearly 40,000-page transcript from the Phase I trial, to reach a different factual conclusion than the courts below, an endeavor this Court's rules warn is rarely undertaken. *See* Rule 10 ("A petition is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."); *see also Hernandez v. New York*, 500 U.S. 253, 266 (1991) ("Our cases have indicated that, in the absence of exceptional circumstances, we would defer to the state-court factual findings, even when those findings relate to a constitutional issue.").

III. The Court Should Not Hold and Should Promptly Deny the Petition.

The Court should reject Petitioners' request to hold this petition pending some other petitions they plan to file in the coming weeks. Not only do Petitioners cite no precedent for this bizarre request,[3] but it does

[3] The cases they cite all involve instances where the Court held petitions pending disposition of lead petitions filed earlier than the "hold petitions."

not make logical sense and is both prejudicial and abusive.

It does not make sense because there is no reason Petitioners could not have filed certiorari petitions in those cases before or at least along with this petition. Moreover, the decisions subject to the future petitions simply reject due process challenges based on prior precedents over which this Court has already denied certiorari. *See Boatright v. Philip Morris USA Inc.*, 217 So. 3d 166, 173 (Fla. Dist. Ct. App. 2018) (summarily rejecting due process by citing *Douglas*); *Searcy v. R.J. Reynolds Tobacco Co.*, 902 F.3d 1342, 1354 (11th Cir. 2018) (recognizing court is bound to reject due process argument in light of *Graham*).[4]

Moreover, holding this petition pending the disposition of future petitions will only encourage further abuse of the writ by Petitioners. They have been undeterred by all the prior denials of certiorari on this same

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[4] That two members of the *Searcy* panel expressed confusion and "intrigue" over *Graham*'s application to the fraudulent concealment and conspiracy findings does not make that decision any more worthy of review. *Searcy* recognized that *Burkhart* is a binding Eleventh Circuit panel opinion holding that *Graham* does so apply. Resolution of intellectual disagreements between judges of a court of appeals is a matter that might be suited to en banc review, but not review by this Court. And in any event, the Eleventh Circuit had already given the issue close en banc review in *Graham*, a decision over which this Court denied certiorari.

In any event, a review of the relevant history and case law related above, as well as Judge Martin's concurring opinion, readily dispel the misapprehensions under which the *Searcy* majority was apparently laboring until it concluded that *Burkhart* controls.

due process issue. They continue to seek serial extensions of time to file petitions for certiorari in *Engle*-progeny cases and do everything in their power to keep the technical possibility of this Court granting review alive solely to delay having to pay the judgments as long as possible. This is because Petitioners do not have to pay *Engle*-progeny judgments until they have exhausted review in this Court. Fla. Stat. § 569.23 (2017); *R.J. Reynolds Tobacco Co. v. Sikes*, 191 So. 3d 491, 494-95 (Fla. Dist. Ct. App. 2016).

Thus, these cases are not like any other kind of case that comes to this Court where holding a petition does not preclude the respondent from enforcing the judgment absent the petitioner making a specific showing of why a stay is justified, as required by this Court's Rule 23.3. In this case, petitioners obtained the maximum possible extension of time to file their petition for writ of certiorari only to file a petition that (1) has no material difference from the prior dozens of petitions they have already filed (showing they did not really need an extension), (2) relies on a misrepresentation of the record to suggest the issue is preserved, and (3) asks the Court to delay ruling pending a future petition that will just repeat the same arguments they have made without success so many times. But they have succeeded in their financial planning goal – simply by delaying their filing so long and taking advantage of this Court's distribution schedule, they have obtained an effective stay of their judgment until 2019, pushing this liability to next year.

Prompt denial of these petitions and stricter scrutiny of extension requests appear to be the only way this Court can deter further abuse of the writ in these cases. Even though petitions like this one – raising an issue that was not preserved below and, in any event, has been rejected by every court to address it (with this Court denying certiorari time and time again) – are frivolous on their face and appear to be part of a dilatory litigation strategy, Petitioners have little to fear. This Court's authority to award double costs and fees would be a toothless remedy in these cases. There are no taxable costs to double, and respondents are already entitled to attorney's fees because Petitioners routinely reject reasonable settlement offers triggering a right to fees under Florida Statutes section 768.79.[5]

[5] In this case, for example, the lower courts have already ruled that Respondent is entitled to recover her attorney's fees because she offered to settle this case before trial for only $240,000.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be promptly denied.

Respectfully submitted,

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