

ORIGINAL

No. 19-163

Supreme Court, U.S.
AUG 01 2019
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In The  
**Supreme Court of the United States**

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MARGARET A. NORTON,

*Petitioner,*

v.

COLGATE PALMOLIVE COMPANY,

*Respondent.*

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**On Petition For A Writ Of Certiorari  
To The Supreme Court Of New Jersey**

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**PETITION FOR A WRIT OF CERTIORARI**

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**QUESTION PRESENTED**

This case has “special reasons” for this court’s review of the basis that the lower court’s mistake of fact is entangled in the proper determination of constitutional law.

**The Question here is:**

Whether the New Jersey Supreme Court failed to apply Supreme Court Precedent, when an acknowledged mistake by the court resulted in an improper judgement, in which violated the right of fairness.

## **RELATED CASES**

Norton v. Colgate. No. ESX-L-1648-16  
New Jersey Superior Court – Law Division (Trial  
Court) Judgement entered October 28, 2016

Norton v. Colgate. No ESX-L-1648-16  
New Jersey Superior Court – Law Division (Trial  
Court) Judgement entered Feb 3, 2017

Norton v. Colgate. No ESX-L-1648-16  
New Jersey Superior Court Law Division (Trial  
Court) Judgement entered March 20, 2017

Norton v. Colgate. No ESX-L-1648-16  
New Jersey Superior Court Law Division (Trial  
Court) Judgement entered June 28, 2017

Norton v. Colgate. No. A-000083-17  
New Jersey Superior Court Appellate Division  
Judgement entered November 16, 2017

Norton v. Colgate. No. A-000083-17  
New Jersey Superior Court Appellate Division  
Judgement entered November 16, 2017

Norton v. Colgate. No. A-000083-17  
New Jersey Superior Court Appellate Division  
Judgement entered November 16, 2017

Norton v. Colgate. No. A-000083-17  
New Jersey Superior Court Appellate Division  
Judgement entered January 8, 2018

Norton v. Colgate. No. A-000083-17  
New Jersey Superior Court Appellate Division  
Judgement entered March 20, 2018

**RELATED CASES – Continued**

Norton v. Colgate. No. A-000083-17  
New Jersey Superior Court Appellate Division  
Judgement entered April 30, 2018

Norton v. Colgate. No. A-000083-17  
New Jersey Superior Court Appellate Division  
Judgement entered April 30, 2018

Norton v. Colgate. No. A-000083-17  
New Jersey Superior Court Appellate Division  
Judgement entered June 4, 2018

Norton v. Colgate. No. 081396  
New Jersey Supreme Court  
Judgement entered October 5, 2018

Norton v. Colgate, No. 081396  
New Jersey Supreme Court  
Judgement entered November 8, 2018

Norton v. Colgate, No. 081396  
New Jersey Supreme Court.  
Judgement entered May 3, 2019

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## **PETITION FOR A WRIT OF CERTIORARI**

Margaret A. Norton respectfully petitions for a Writ of Certiorari to review the judgment of the New Jersey Supreme Court in this matter.

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## **OPINIONS BELOW**

The New Jersey Supreme Court denied rehearing on May 3, 2019 unpublished No Opinion given is reprinted at App. 31.

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## **JURISDICTION**

The New Jersey Supreme Court Granted leave to file Petition for Certification as within time on October 5, 2018 (App. 2), and on November 8, 2018 The New Jersey Supreme Court denied review (App. 1), and denied rehearing on May 3, 2019 (App. 31). This court has jurisdiction under 28 U.S.C. § 1257(a)

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## **CONSTITUTIONAL AND STATUTORY PROVISIONS**

Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides “nor shall any state [ . . . ] deny any person within its jurisdiction the equal protection of the laws”.

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## STATEMENT OF THE CASE

### 1. Material facts

This is a personal injury case in which the petitioner had been using the respondent's Colgate great regular flavor toothpaste that is sold over-the-counter, and contains the Sodium lauryl sulfate (SLS) ingredient. The petitioner was experiencing from the toothpaste severe dry mouth, no saliva, irritation, burning and tingling sensation in the mouth. Petitioner later discovered through the respondent's SLS-free Prescription Only toothpaste advertisement that the respondent had knowledge that the SLS ingredient used in toothpaste pose a danger of multiple adverse side effects.

The respondent announced on their new Colgate PreviDent 5000 Dry Mouth Prescription Only SLS-free toothpaste advertisement, that the ingredient SLS pose a danger of irritation and dryness, with a motive to compel dry mouth suffers to want the new SLS-free toothpaste, but failed to announce such a warning on their Colgate great regular flavor toothpaste that contains the SLS ingredient, and is sold over-the-counter. The respondent also announced on their new Colgate PreviDent 5000 Dry Mouth Prescription Only SLS-free toothpaste 2nd advertisement, that Sodium Lauryl Sulfate increases sensitivity to the oral mucosa. But failed to announce such warning on their Colgate great regular flavor toothpaste in which contains the Sodium Lauryl Sulfate ingredient, and is sold over-the-counter.

In addition, petitioner also presented evidence of a copy of the respondent's footnoted Clinical Research Study, footnoted from the Colgate PreviDent 5000 Dry Mouth Prescription Only SLS-free toothpaste advertisement, in which the respondent used the clinical study to back their claims of multiple adverse effects of the SLS ingredient, but failed to warn of the SLS ingredients' adverse effects on their Colgate great regular flavor toothpaste that contains the Sodium Lauryl Sulfate (SLS) ingredient, and is sold over-the-counter.

In the June 28, 2017 Order with Statement of Reasons the trial court held that plaintiff cannot demonstrate a Prima facie case of negligence without expert testimony. That a witness qualified as an expert was needed to assist the trier of fact to understand the evidence, using N.J.R.E 702. The trial court also opined that expert testimony is necessary to prove there is a causal link between a claimed injury and the tortuous act alleged under *Kelly v. Borwegan*, 95 N.J. Super. 240, 243-44 (App. Div. 1967) However, the Trial Court further found that "she does mention evidence that the court did not consider". (App. 20) The Opinion of Honorable Judge Spencer is acknowledging that a mistake affected the outcome of the judgment. (App. 20)

## **2. Direct Appeal**

From the June 28, 2017 motion for reconsideration, petitioner appealed to the New Jersey Superior Court Appellate Division, and raised the issue of the trial court opined that there was "evidence the court

did not consider". The Notice of Appeal was filed late and therefore, it was denied on November 16, 2017 by Honorable Joseph L. Yannotti, for being untimely and petitioner had failed to show good cause to extend the appeal. (App. 18) Petitioner filed motions for rehearing but they were denied again for the failure to show good cause to extend the appeal. (App. 3, 5, 7, 9, 11) However, it must be noted that Honorable Joseph L. Yannotti whom dismissed the appeal, later dissented from that decision on the Order dated March 20, 2018. (App. 9)

The appellate court judge, Judge Yannotti disagreed with his decision and therefore, dissented and the trial court judge, Judge Spencer disagreed with her ruling, and acknowledged a mistake occurred that affected the outcome of the case and resulted in an improper judgment. (App. 20)

Petitioner then appealed to the New Jersey Supreme Court of last resort from the appellate division Order dated June 4, 2018 renewing the issue of the trial court opined that "there was evidence that the court did not consider", in which made the ruling reached unfair. Petitioner argued substantial grounds for certification to be granted in the interest of justice. (Quoting) Certification may be granted in the "interest of justice" but only where the result reached by the trial court is "palpable wrong, unfair or unjust," or the "rights of innocent persons, or an unwary public, are jeopardized." Mahony, *Supra*, 95 N.J. at 52

An unfair result was reached by the trial court. In the June 28, 2017 Statement of Reasons the Honorable

Judge Spencer denied petitioner's motion for reconsideration. However, Honorable Judge Spencer also opined that there was evidence that the court did not consider. Evidence the court did not consider constitutes an unfair hearing, whereas, the result reached had an unfair, adverse effect on the decision in the case. (Cert. Pet. 5)

The New Jersey Supreme Court of last resort granted petitioner's leave to file the petition for certification as within time on October 5, 2018, (App. 2) then on November 8, 2018 the New Jersey Supreme Court denied the review. (App. 1) No Opinion given. Petitioner then filed a motion for rehearing, renewing the issue of there was evidence that the court did not consider. On May 3, 2019 the New Jersey Supreme Court denied the motion for reconsideration. (App. 31) No Opinion given.

This case presents the question of whether the New Jersey Supreme Court failed to apply Supreme Court Precedent, when an acknowledged mistake by the trial court resulted in an improper judgement, in which affected the right to fairness.



### **REASONS FOR GRANTING THE PETITION**

- A. The Supreme Court erroneously failed to apply Supreme Court precedent, this court must correct the error.**
- I. Reversible Error/Acknowledged mistake resulted in an improper judgment, in which violated the right of fairness.**

Reversible Error is an error of sufficient gravity to warrant reversal of a judgement on appeal. It is an error by a judge or jury, which results in an unfair trial.

The New Jersey Supreme Court could have reversed here on the grounds of "special reasons" in which the mistake of fact is entangled in the proper determination of Constitutional Law.

Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides "nor shall any state [ . . . ] deny any person within its jurisdiction the equal protection of the laws".

The United States Supreme Court mandates that the state must treat an individual in the same manner as others in similar conditions and circumstances. In this case the deprivation of petitioner's substantial right to fairness, constitutes two separate standards for individuals that are similarly suited. This violates equal protection of the laws. In *Brown v. Board of Education*, 347 U.S. 483 (1954) the court declared that separate is inherently unequal.

This court must reverse the error in the interest of justice, as the integrity of the courts are at stake, public trust in judicial fairness is at stake.

The impact and consequences of unfairness in judicial proceedings transcends far beyond the petitioner in this instant case. Whereas, it creates an unacceptable risk of unfairness for all future citizens on a national scale.

The lower court's decision is implausible in light of deprivation of fairness, in which created prejudice.

Petitioner raised the issue of unfairness below, and the issue of prejudice. If the error occurred below and affected a substantial right, the court must decide further whether the error was appropriately raised below. If it was the court may reverse, finding "prejudicial" or "reversible" error. See, e.g., Weinstein & Berger, *supra* note 2, 103[06]-[07]

This court should reverse the judgment.

The lower court's decision is implausible in the light of the unfairness of evidence the court did not consider, and the fact that the respondent has never opposed or even addressed any of the arguments petitioner put forth comparing the respondent's SLS-free Prescription Only toothpaste advertisement, verses, the respondent's over-the-counter toothpaste product that contains the SLS ingredient. This is because the arguments are extremely meritorious. For example, the respondent cannot credibly oppose their own statements denouncing the SLS ingredient on their

SLS-free toothpaste advertisement, and omitting the warnings about the SLS ingredient's adverse effects on their over-the-counter toothpaste product that contains the SLS ingredient and is sold over-the-counter.

The record shows that none of these issues or evidence were addressed or opposed by the respondent, and none of the evidence was ruled on by the court, therefore, the judgment was unfair and improper.

This court should grant Certiorari to review the entire record below, or summary reverse.

**II. Clearly Erroneous/The Error was so significant that the judgment must be reversed.**

Elements that constitute the judgment as being clearly erroneous are: 1) the right to fairness was violated, this constitutes prejudice, 2) if one party is entitled to be fully heard, but the other party is deprived of being fully heard, this violates due process of the law, 3) it is impossible for the judge or trier of fact to have made a proper decision when the case has been biased due to a mistake. Additionally, the mistake caused injury to the moving party, whereas, the outcome of the case would have been substantially different had the mistake not occurred.

The lower court's decision is implausible in the light of these elements.



It is impossible to make a proper judgment without fairness to both parties. If one party is entitled to fairness then all are entitled to fairness. These rights are protected by equal protection of the laws and due process of the law.



### CONCLUSION

This honorable court should grant certiorari or summary reversal, to protect and preserve the rights to fairness in judicial proceedings for all citizens throughout the country.

August 1, 2019

Respectfully submitted,

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App. 1

SUPREME COURT OF NEW JERSEY  
C-309 September Term 2018  
081396

Margaret A. Norton,  
Plaintiff-Petitioner,

ORDER

v.

(Filed Nov. 8, 2018)

Colgate Palmolive,  
Defendant-Respondent.

A petition for certification of the judgment in A-000083-17 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 7th day of November, 2018.

/s/ Mark Neary

CLERK OF THE  
SUPREME COURT

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