

No. 18A247

IN THE
Supreme Court of the United States

PHILIP MORRIS USA INC. AND
LIGGETT GROUP LLC,

Petitioner,

v.

RICHARD BOATRIGHT AND DEBORAH BOATRIGHT,

Respondent.

OPPOSITION TO APPLICATION FOR EXTENSION OF TIME
TO FILE PETITION FOR A WRIT OF CERTIORARI OR, IN THE ALTERNATIVE,
MOTION TO RECONSIDER ORDER GRANTING EXTENSION

TO THE HONORABLE CLARENCE THOMAS, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE ELEVENTH CIRCUIT:

Respondents, Richard and Deborah Boatright, oppose the application for an extension of time to file a petition for writ of certiorari—or, alternatively, seek reconsideration of an order granting an extension—because Petitioners did not and cannot establish the requisite “good cause” for the extension. Petitioners have already filed **24 petitions** arising from Florida’s *Engle* litigation. All 24 raised the same due-process issue that Petitioners discuss in their application for extension of time. Petitioners have not explained why this time will be any different.

What is more, Petitioners have serially sought extensions of the petition deadline in order to postpone finality of individual cases in Florida’s *Engle* litigation. In addition to the 24 petitions they filed, they have sought a 60-day extension in at least another 18 cases, where they never filed a petition for writ of certiorari. There is a reason for this practice: Florida law blocks

Engle plaintiffs from collecting on judgments while review is pending before this Court. *Engle* defendants, then, view any delay as a consequence-free proposition. The same cannot be said for plaintiffs like Mr. Richard Boatright, whose health is failing. For Mr. Boatright, additional delay could very well mean that he will not live to see his case resolved. This Court should not allow Petitioners an extension of time.

No reasonable likelihood of review.

Petitioners do not acknowledge that they have already filed 24 petitions arguing the same due-process issue, which this Court has uniformly declined to review.¹ Petitioners first sought review from the Florida Supreme Court's 2006 decision in *R.J. Reynolds Tobacco Co. v. Engle*, 552 U.S. 941 (2007). Eleven years later, Petitioners advise this Court that they plan to file their *twenty-fifth* duplicative, successive petition for certiorari review, but that this time the outcome will be different. There is no legitimate basis for this pretense of optimism.

Abuse of the extension process.

¹ *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).

“An application to extend the time to file a petition for a writ of certiorari is not favored.” Supreme Court Rule 14.5. When a litigant abuses the extension process (as is the case here), such a request should be denied. Petitioners have serially sought extensions of the petition deadline in order to postpone finality of individual cases in Florida’s *Engle* litigation. In addition to the 24 petitions they did file, Petitioners have sought and received an additional 60 days to file their petition for writ of certiorari in at least 18 more cases in which they *never* ultimately filed a certiorari petition.²

There is a reason for this pattern of delay. Namely, section 569.23(3)(b)(1), Florida Statutes, which addresses a plaintiff’s ability to collect on money judgments obtained against *Engle* defendants like the Petitioners. Under that statute, *Engle* plaintiffs must wait until after the deadline for filing a petition for writ of certiorari expires before collecting on a judgment,

² The *Engle* defendants received extensions in the following cases where the companies never ultimately filed a petition: (1) *R.J. Reynolds Tobacco Co. v. O’Hara*, No. 17A1194 (extension from May 9, 2018 through July 6, 2018); (2) *Philip Morris USA Inc. v. Allen*, No. 17A1196 (extension from May 10, 2018 to July 9, 2018); (3) *Philip Morris USA, Inc. v. Merino*, No. 16A763 (extension from February 7, 2017, through April 8, 2017); (4) *R.J. Reynolds Tobacco Co. v. Buonomo*, No. 16A72 (extension from January 25, 2017, through March 26, 2017); (5) *Philip Morris USA, Inc. v. Bowden*, No. 15A1101 (extension from May 2, 2016, through July 1, 2016); (6) *Philip Morris USA Inc. v. Buchanan*, No. 15A1100 (extension from May 2, 2016, through July 1, 2016); (7) *Philip Morris USA Inc. v. Kayton*, No. 15A1099 (extension from May 1, 2016, through June 30, 2016); (8) *R.J. Reynolds Tobacco Co. v. Sikes*, No. 15A1098 (extension from May 2, 2016, through July 1, 2016); (9) *R.J. Reynolds Tobacco Co. v. Thibault*, No. 15A1097 (extension from May 2, 2016 through July 1, 2016); (10) *R.J. Reynolds Tobacco Co. v. Hiott*, No. 15A1096 (extension from May 2, 2016, though July 1, 2016); (11) *Philip Morris USA Inc. v. Cohen*, No. 15A1066 (extension from April 28, 2016, through June 27, 2016); (12) *Philip Morris USA, Inc. v. Hess*, No. 15A640 (extension from, December 24, 2015, through February 22, 2016); (13) *R.J. Reynolds Tobacco Co. v. Ballard*, No. 15A622 (extension from December 23, 2015, through February 19, 2016); (14) *Philip Morris USA Inc. v. Greene*, No. 15A601 (extension from December 17, 2015, through February 15, 2016); (15) *R.J. Reynolds Tobacco Co. v. Reese*, No. 12A1091 (extension from May 21, 2013 through July 19, 2013); (16) *Philip Morris USA, Inc. v. Hatziyannakis*, No. 12A953 (extension from April 16, 2013, through June 15, 2013); (17) *R.J. Reynolds Tobacco Co. v. Bowman*, No. 12A749 (extension from February 6, 2013, through April 5, 2013); (18) *Philip Morris USA Inc. v. Piendle*, No. 12A227 (extension from September 8, 2012, through November 17, 2012).

even when Petitioners do not intend to actually file a petition. *R.J. Reynolds Tobacco Co. v. Sikes*, 191 So. 3d 491 (Fla. Dist. Ct. App. 2016). Thus, Petitioners profit from any delay, especially considering that they are not even required to bond the entire judgment amount. See § 569.23(3)(a)(2), Fla. Stat.

This Court should not condone Petitioners' extension practice. The Florida Supreme Court decided *Engle* over 11 years ago. Petitioners, if they want to continue attacking this long-settled law, should at least be required to do so punctually.

Delay prejudices Mr. Boatright.

Delay is especially prejudicial in this particular case. The *Engle* class action began in 1994. Mr. Boatright filed his individual *Engle* lawsuit in 2007. He won his verdict four years ago, in 2014. He defended that verdict at Florida's Second District Court of Appeal. *Philip Morris USA Inc. v. Boatright*, 217 So. 3d 166 (Fla. Dist. Ct. App. 2017). And he successfully opposed Petitioners' attempts to seek further review at the Florida Supreme Court. *Philip Morris USA, Inc. v. Boatright*, SC17-894, 2018 WL 3090430 (Fla. June 22, 2018).

Mr. Boatright should be spared any further prolongment. He is gravely ill, having fought a decades-long battle with chronic obstructive pulmonary disease (COPD). Over the course of that battle, he has undergone *two* double-lung transplants, which have spawned a host of serious and life-threatening side effects. To be blunt, Mr. Boatright does not have much time left. He should be allowed to see his case resolved.

Alternative request for reconsideration.

In the event this Court has already granted the extension application, Respondents respectfully ask this Court to reconsider that order. The members of the Eleventh Circuit bar, including the undersigned, are quite thankful that our Circuit Justice has a generous view of the

grounds for an extension. And, we all recognize that our Circuit Justice routinely grants extension applications before an opposition can be filed. But, for the reasons outlined above, Respondents request that Petitioners' extension request here be denied.

Respectfully submitted,

/s/Celene H. Humphries

Celene H. Humphries

Counsel of Record

BRANNOCK & HUMPHRIES

1111 W. Cass Street, Suite 200

Tampa, Florida 33606

(813) 223-4300

tobacco@bhappeals.com

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Counsel for Respondents