

No. ___-___

IN THE
Supreme Court of the United States

R. J. REYNOLDS TOBACCO COMPANY,
Petitioner,

v.

AMANDA JEAN HALL, AS PERSONAL REPRESENTATIVE
OF THE ESTATE OF ARTHUR L. HALL, SR.,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In its traditional formulation, the doctrine of issue preclusion prohibits a party from litigating an issue that was *actually decided* against it in prior litigation. In this case, applying *R. J. Reynolds Tobacco Co. v. Martin*, 53 So. 3d 1060 (Fla. Dist. Ct. App. 2010), the court precluded litigation of issues that the prior jury *may not* have decided.

The question presented is the same one presented in the petition for certiorari in *Martin*: whether this unprecedented expansion of preclusion law violates the Due Process Clause of the Fourteenth Amendment.

PARTIES TO THE PROCEEDING

The sole plaintiff below was Respondent Amanda Jean Hall, as personal representative of the estate of Arthur L. Hall, Sr.

The original defendants below were Petitioner R. J. Reynolds Tobacco Company, Philip Morris USA, Inc., Lorillard Tobacco Company, Lorillard, Inc., Liggett Group, LLC, and Vector Group Ltd., Inc.

CORPORATE DISCLOSURE STATEMENT

Petitioner R. J. Reynolds Tobacco Company is a wholly owned subsidiary of R.J. Reynolds Tobacco Holdings, Inc., which in turn is a wholly owned subsidiary of Reynolds American Inc. (“RAI”), a publicly traded corporation.

Brown & Williamson Holdings, Inc., and Invesco Ltd. hold more than 10% of the stock of RAI. British American Tobacco p.l.c. indirectly holds more than 10% of the stock of RAI through Brown & Williamson Holdings, Inc.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED.....	i
PARTIES TO THE PROCEEDING	ii
CORPORATE DISCLOSURE STATEMENT.....	iii
TABLE OF AUTHORITIES.....	viii
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISION INVOLVED	1
STATEMENT OF THE CASE	2
A. The <i>Engle</i> Class Action	2
B. The <i>Martin</i> Decision	4
C. The Proceedings In This Case.....	5
REASONS FOR GRANTING THE PETITION.....	8
I. THE QUESTION PRESENTED	
WARRANTS REVIEW IN THIS CASE	9
II. ALTERNATIVELY, THE COURT	
SHOULD HOLD THIS CASE FOR	
<i>MARTIN</i>	11
CONCLUSION	12
APPENDICES	
Appendix A:	
<i>R. J. Reynolds Tobacco Co. v. Hall,</i>	
70 So. 3d 642 (Fla. Dist.	
Ct. App. 2011)	1a

TABLE OF CONTENTS
(continued)

	Page
Appendix B:	
Order Deferring Ruling on <i>Engle</i> Impact in <i>Hall v. R. J. Reynolds Tobacco Co.</i>	3a
Appendix C:	
Omnibus Order on Motions in Limine in <i>Hall v. R. J. Reynolds Tobacco Co.</i>	10a
Appendix D:	
Order Denying Post-Trial Motions in <i>Hall v. R. J. Reynolds Tobacco Co.</i>	22a
Appendix E:	
Florida Supreme Court's Order Declining Jurisdiction in <i>R.J.</i> <i>Reynolds Tobacco Co. v. Hall</i>	24a
Appendix F:	
Final Judgment in <i>Hall v. R.J.</i> <i>Reynolds Tobacco Co.</i>	25a
Appendix G:	
Jury Verdict Form in <i>Hall v. R. J.</i> <i>Reynolds Tobacco Co.</i>	27a
Appendix H:	
Jury Verdict Form, Punitive-Damages Phase, in <i>Hall v. R.J. Reynolds</i> <i>Tobacco Co.</i>	31a

TABLE OF CONTENTS
(continued)

	Page
Appendix I:	
Amended Complaint in <i>Hall v. R. J. Reynolds Tobacco Co.</i>	33a
Appendix J:	
Defendant’s Motion in Limine on the Use of the <i>Engle</i> Findings in <i>Hall v. R. J. Reynolds Tobacco Co.</i>	48a
Appendix K:	
Defendant’s Notice of Filing of Proposed Jury Instructions in <i>Hall v. R. J. Reynolds Tobacco Co.</i>	82a
Appendix L:	
Excerpts of Defendant’s Motion for a Directed Verdict in <i>Hall v. R.J. Reynolds Tobacco Co.</i>	86a
Appendix M:	
Excerpts of Defendant’s Motion to Set Aside the Phase I Verdict in <i>Hall v. R.J. Reynolds Tobacco Co.</i>	114a
Appendix N:	
Excerpts of Defendant’s Motion for New Trial Based on Defects in the Punitive-Damages Phase in <i>Hall v. R. J. Reynolds Tobacco Co.</i>	138a

TABLE OF CONTENTS
(continued)

	Page
Appendix O:	
Excerpts of Appellant’s Amended Initial Brief in the First District Court of Appeal in <i>R. J. Reynolds Tobacco Co.</i> <i>v. Hall</i>	170a
Appendix P:	
Petitioner’s Brief on Jurisdiction in the Florida Supreme Court in <i>R. J. Reynolds</i> <i>Tobacco Co. v. Hall</i>	191a
Appendix Q:	
Excerpts of Trial Transcript in <i>Hall v.</i> <i>R. J. Reynolds Tobacco Co.</i>	195a

TABLE OF AUTHORITIES

Page(s)

CASES

<i>Am. Home Prods. Corp. v. Ferrari</i> , 131 S. Ct. 1567 (2011).....	11
<i>Clark v. Arizona</i> , 548 U.S. 735 (2006).....	1
<i>Engle v. Liggett Grp., Inc.</i> , 945 So. 2d 1246 (Fla. 2006).....	<i>passim</i>
<i>Fayerweather v. Ritch</i> , 195 U.S. 276 (1904).....	9, 11
<i>Goodyear Dunlop Tires Operations, S.A. v. Brown</i> , 131 S. Ct. 2846 (2011).....	1
<i>Honda Motor Co. v. Oberg</i> , 512 U.S. 415 (1994).....	9
<i>IMS Health, Inc. v. Schneider</i> , 131 S. Ct. 3091 (2011).....	11
<i>KPMG LLP v. Cocchi</i> , No. 10-1521 (U.S. Nov. 7, 2011).....	1
<i>Lawrence v. Chater</i> , 516 U.S. 163 (1996).....	11
<i>R. J. Reynolds Tobacco Co. v. Martin</i> , 53 So. 3d 1060 (Fla. Dist. Ct. App. 2010).....	<i>passim</i>
<i>State Farm Mut. Auto. Ins. Co. v. Willes</i> , 551 U.S. 1111 (2007).....	11
<i>Taylor v. Sturgell</i> , 553 U.S. 880 (2008).....	2

TABLE OF AUTHORITIES
(continued)

Page(s)

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. XIV, § 1, cl. 2 1

STATUTES

28 U.S.C. § 1257(a) 1

OPINIONS BELOW

The decision of the Florida First District Court of Appeal (Pet. App. 1a-2a) is reported at 70 So. 3d 642. The Florida Supreme Court's order denying review (Pet. App. 24a) is reported at 67 So. 3d 1050.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257(a). The First District entered a final judgment on May 20, 2011. Pet. App. 1a. On July 19, 2011, the Florida Supreme Court declined jurisdiction. Pet. App. 24a. On October 7, 2011, Justice Thomas granted an extension of time to file a petition for certiorari until December 16, 2011. This Court has jurisdiction over the First District's judgment. *See, e.g., KPMG LLP v. Cocchi*, No. 10-1521, slip op. at 1 (U.S. Nov. 7, 2011); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2852-53 (2011); *Clark v. Arizona*, 548 U.S. 735, 746-47 (2006).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, § 1, cl. 2.

STATEMENT OF THE CASE

Throughout Anglo-American legal history, the doctrine of issue preclusion has been limited to issues “*actually litigated and resolved* in a valid court determination essential to the prior judgment.” *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008) (emphasis added and citation omitted). However, in *R. J. Reynolds Tobacco Co. v. Martin*, 53 So. 3d 1060 (Fla. Dist. Ct. App. 2010), the Florida First District Court of Appeal dramatically departed from that rule. *Martin* held that, in individual cases arising from the class action decertified in *Engle v. Liggett Group, Inc.*, 945 So. 2d 1246 (Fla. 2006), the defendants would be precluded from litigating issues that the *Engle* jury may *or may not* have resolved against them prior to decertification. In this case, the First District likewise applied *Martin* to preclude Petitioner R. J. Reynolds Tobacco Company from litigating issues that the prior jury may not have resolved against it.

In *Martin*, Reynolds today has filed a petition for certiorari presenting the question whether precluding a defendant from litigating issues that the prior jury may not have resolved against it violates the Due Process Clause of the Fourteenth Amendment. This case presents the same question.

A. The *Engle* Class Action

The petition for certiorari in *Martin* fully details the background in *Engle*. Accordingly, we provide only a brief summary here.

Engle was a putative class action brought against major cigarette manufacturers, including Reynolds, by allegedly addicted smokers. During Phase I of *Engle*, the class sought to establish that the defendants had sold defective cigarettes, committed acts of

negligence, and fraudulently concealed information about smoking, both individually and through a conspiracy, over a period encompassing more than four decades. The class presented dozens of alternative allegations of defect, negligence, and concealment, many of which applied only to certain cigarette types or time periods. *See* Pet. for Cert., in *R. J. Reynolds Tobacco Co. v. Martin*, No. ___, at 9-11 (Dec. 16, 2011) (“*Martin* Pet. ___”). At the end of Phase I, the jury found that each defendant had sold defective cigarettes, committed negligence, and concealed information individually and through a conspiracy. But the jury did not specify which of the alternative theories of defect, negligence, and concealment it had adopted, which it had rejected, and which it had simply not addressed. *Id.* at 11-12.

Ultimately, the Florida Supreme Court decertified the *Engle* class, but nonetheless “retain[ed] [some of the] Phase I findings,” including the defect, negligence, concealment, and conspiracy-to-conceal findings, for use in future litigation. 945 So. 2d at 1269. The court permitted former class members to file “individual damages actions” within a year, and it decreed that the retained findings “will have res judicata effect” in those actions. *Id.*

In the wake of *Engle*, thousands of these individual “*Engle* progeny” actions, including this case and *Martin*, were filed in state and federal courts throughout Florida. The precise “res judicata effect” of the *Engle* findings—and the due-process limitations on that “res judicata effect”—have been critical issues in all of these cases.

B. The *Martin* Decision

In *Martin*, the First District addressed the “res judicata effect” that the *Engle* findings should receive in individual progeny cases. In that case, the trial court held that the *Engle* findings establish the tortious-conduct elements of claims for strict liability, negligence, concealment, and conspiracy. The court thus did not require Ms. Martin to prove that the specific cigarettes smoked by her husband were defective, negligently designed or marketed, or the subject of any statements that fraudulently omitted information. As a result, she was permitted to establish liability based only on a showing that her husband had died from an addiction to smoking. *See Martin* Pet. 16.

The First District affirmed. It held that the *Engle* findings “establish the conduct elements of the asserted claims” in all progeny cases, “and individual *Engle* plaintiffs need not prove up those elements or demonstrate the relevance of the findings to their lawsuits.” App. to Pet. for Cert., in *R. J. Reynolds Tobacco Co. v. Martin*, No. ___, at 15a (“*Martin* Pet. App. __a”). Thus, for example, the First District refused to require Ms. Martin to prove that the unfiltered Lucky Strike cigarettes smoked by her husband were defective, much less that any such defect was a proximate cause of his injuries. *Martin* Pet. App. 10a-17a.

The First District rested its decision on a final Omnibus Order entered by the *Engle* trial court, which denied the defendants’ motion for a directed verdict. *Martin* Pet. App. 14a-15a. That order did not seek to determine which of the alternative defect, negligence, and concealment allegations the *Engle*

jury had actually accepted. Instead, it considered only whether the class had presented legally sufficient evidence to support the *Engle* findings. See *Martin* Pet. App. 124a. In so doing, it specifically highlighted misconduct theories that applied only to “some”—but not all—brands or types of cigarettes. *Id.*

The First District made no attempt to justify its ruling under normal standards of issue preclusion or due process. Instead, it ignored Reynolds’s arguments on both points, and simply asserted that a contrary ruling “would essentially nullify” *Engle*. *Martin* Pet. App. 11a.

C. The Proceedings In This Case

Respondent Amanda Jean Hall sued Reynolds for the death of her husband from smoking. Mr. Hall began smoking Lucky Strikes or Camel cigarettes in 1953, and switched to Winston cigarettes in the mid 1970s. Pet. App. 196a-198a, 203a-04a. Ms. Hall pleaded, among others, claims for strict liability, negligence, fraudulent concealment, and conspiracy to fraudulently conceal. Pet. App. 40a-43a.

As in *Martin*, a critical issue in the case was the extent of the “res judicata effect” of the *Engle* findings. And, as in *Martin*, the plaintiff sought to establish liability without proving that the cigarettes smoked by her husband were defective, negligently designed or marketed, or fraudulently marketed. Pet. App. 40a-43a.

In a pretrial motion, Reynolds moved for a determination that, given the generality of the *Engle* findings and the number of alternative theories litigated in *Engle*, use of those findings to establish elements of a plaintiff’s claims would violate both Florida prec-

clusion law and due process. The trial court declined to decide the impact of the *Engle* findings at that time. Pet. App. 7a-9a.

On the eve of trial, Reynolds again moved to determine the proper use of the *Engle* findings. It renewed its prior arguments. Pet. App. 48a-81a. The trial court rejected those arguments and ruled that “[t]he jury will be instructed that they are to accept these findings as fact.” Pet. App. 14a.

Over Reynolds’s continuing objections, Pet. App. 83a, the trial court instructed the jury that, if Mr. Hall was an *Engle* class member, the *Engle* findings established essential elements of each of Ms. Hall’s claims. Thus, on the strict-liability claim, the court instructed the jury that Reynolds had “placed cigarettes on the market that were defective and unreasonably dangerous,” and the only open issue was “whether the unreasonably dangerous product placed on the market by R.J. Reynolds was a legal cause of [Mr.] Hall’s death.” Pet. App. 207a. On the negligence claim, the court instructed the jury that Reynolds “was negligent,” and the only open issue was whether the “negligence was a legal cause of [Mr.] Hall’s death.” *Id.* On the fraudulent-concealment claim, the court instructed the jury that Reynolds had “concealed or omitted material information, not otherwise known or available, knowing the material was false or misleading [*sic*], or failed to disclose material facts concerning the health effects or addictive nature of smoking cigarettes or both,” and the only open issue was “whether the concealment or omission of material information by R.J. Reynolds . . . was a legal cause of [Mr.] Hall’s death.” Pet App. 205a-06a, 207a-08a. Finally, on the conspiracy claim, the court

instructed the jury that Reynolds had “agreed with other companies to conceal or omit information regarding the health effects of cigarettes or their addictive nature or both,” and the only open issue was whether “acts proven in furtherance of that conspiracy were a legal cause of the death of [Mr.] Hall.” Pet. App. 205a, 208a.

The court gave these instructions even though the *Engle* verdict form does not specify which brands or types of cigarettes the jury had found defective, much less what that defect was. Nor does it specify what conduct the jury had found negligent, or what statements contained fraudulent omissions, or what conduct was undertaken in furtherance of any conspiracy. Moreover, the court never disputed Reynolds’s argument that the *Engle* findings could have rested on theories that would simply not apply to Mr. Hall.

After finding that Mr. Hall was an *Engle* class member (Pet. App. 27a-28a), the jury returned a split verdict. It found for Ms. Hall on her claims for strict liability, negligence, and conspiracy, but against Ms. Hall on her fraudulent-concealment claim. Pet. App. 28a-29a. The jury determined that Reynolds was sixty-five percent responsible, and Mr. Hall thirty-five percent responsible, for his death. Pet. App. 29a. It awarded Ms. Hall \$5 million in compensatory damages, and, based on the conspiracy finding, concluded that punitive damages were warranted. Pet. App. 30a. After a second trial phase, the jury awarded Ms. Hall \$12.5 million in punitive damages. Pet. App. 31a.

In post-trial motions, Reynolds once again argued that the trial court’s use of the *Engle* findings violated due process. Pet. App. 122a-24a, 143a-149a.

The trial court denied the motions. Pet. App. 22a-23a. After reducing the compensatory-damages award to reflect the jury's apportionment of fault, the court entered a final judgment for Ms. Hall of \$15.75 million. Pet. App. 25a.

On appeal, Reynolds again argued that the trial court violated due process in precluding litigation over whether the cigarettes smoked by Mr. Hall were defective, negligently designed or marketed, or fraudulently marketed. Pet. App. 186a-89a. The First District affirmed the judgment of the trial court, in a per curiam order that cited *Martin* but contained no additional reasoning. Pet. App. 2a.

Reynolds asked the Florida Supreme Court to take jurisdiction of the case while considering the state-law and federal due-process questions posed in *Martin*, and, ultimately, to reverse on the same basis that it should reverse in *Martin*. See Pet. App. 191a-94a. The Florida Supreme Court held the case pending its disposition of Reynolds's petition for review in *Martin*. After it declined to accept jurisdiction in *Martin*, it likewise declined to accept jurisdiction in this case. Pet. App. 24a.

REASONS FOR GRANTING THE PETITION

This case raises the same question as the petition for certiorari in *Martin*—whether the Due Process Clause prohibits state courts from deviating from the centuries-old, common-law rule limiting issue preclusion to issues *actually decided* in prior litigation. The Court should grant certiorari in this case to resolve that issue. Alternatively, it should hold this petition pending its resolution of the petition for certiorari in *Martin*.

I. THE QUESTION PRESENTED WARRANTS REVIEW IN THIS CASE

This case squarely presents the same question as *Martin*. For the reasons explained at length in the petition for certiorari in *Martin*, that question warrants this Court’s review. *First*, the preclusion standard applied by the First District here and in *Martin* conflicts with this Court’s decision in *Fayerweather v. Ritch*, 195 U.S. 276 (1904), which held, as a matter of due process, that issue preclusion cannot apply where a previous verdict could have rested on grounds different from those sought to be precluded. *Id.* at 299, 307. *Second*, the First District’s preclusion standard dramatically departs from a centuries-old and uniformly followed common-law rule—that issue preclusion does not apply when the verdict from the prior suit could have rested on grounds other than the one for which preclusion is sought. Such a stark abrogation of common-law protections warrants review by this Court and “raises a presumption” of a due-process violation. *Honda Motor Co. v. Oberg*, 512 U.S. 415, 430 (1994). *Third*, the First District’s constitutionally suspect preclusion standard affects thousands of pending *Engle* progeny cases.

This case illustrates the serious constitutional problems with the First District’s preclusion standard. In particular, the *Engle* findings could have rested on many alternative allegations that would not establish elements of Ms. Hall’s claims. The jury in this case did not find, and was not asked to find, that a particular type or brand of cigarette caused Mr. Hall’s death. *See* Pet. App. 27a-30a. The *Engle* findings, however, could rest on such type-specific or brand-specific allegations. For example, the *Engle*

defect finding could rest on the theory that “light” cigarettes cause the smoker to smoke more (*see Martin* Pet. 9), but the jury in this case could have easily found that Mr. Hall’s injury resulted from twenty years of smoking *unfiltered* (non-light) cigarettes (Pet. App. 196a-97a, 203a-04a). Likewise, the *Engle* negligence finding could rest on youth-marketing campaigns alleged to have occurred during the 1960s, 1970s, and 1980s (*Martin* Pet. 10), but Mr. Hall was fully grown by then (Pet. App. 198a). Finally, the *Engle* conspiracy finding could rest on statements concerning the distinctive health risks of light cigarettes (*Martin* Pet. 10), but the jury here could have concluded that Mr. Hall’s injury was caused by his smoking of unfiltered, non-light cigarettes (Pet. App. 196a-97a, 203a-04a). In sum, Reynolds in this case was precluded from litigating the tortious-conduct elements of Ms. Hall’s claims, not because it was shown that the *Engle* jury *actually decided* the pertinent issues against Reynolds, but only because the *Engle* jury *reasonably could have decided* those issues.

This case also confirms the breadth of the First District’s preclusion standard. Mr. Martin and Mr. Hall had significantly different smoking histories: Mr. Martin smoked Lucky Strike cigarettes (*Martin* Pet. 15-16), whereas Mr. Hall smoked Lucky Strike, Camel, and Winston cigarettes (Pet. App. 196a-197a, 203a-04a). But despite these different smoking histories, the First District rejected Reynolds’s due-process challenge with nothing more than an unreasoned citation to *Martin*. Pet. App. 2a. That dismissive disposition leaves no doubt that the Florida courts will now apply the *Engle* findings to each and every brand or type of cigarettes and to each and

every allegation of tortious conduct referenced in the year-long *Engle* class trial. Such a sweeping use of issue preclusion—to encompass anything that reasonably could have been decided against the defendants during the year-long Phase I trial in *Engle*—is flatly inconsistent with *Fayerweather*, unprecedented in Anglo-American jurisprudence, and profoundly unfair to the *Engle* defendants.

II. ALTERNATIVELY, THE COURT SHOULD HOLD THIS CASE FOR *MARTIN*

If the Court does not grant review here, it at least should hold this case pending its resolution of *Martin*. To ensure the similar treatment of similar cases, the Court routinely holds petitions that implicate the same issue as other cases pending before the Court, and, once the related case is decided, it resolves the held petitions in a consistent manner. *See, e.g., IMS Health, Inc. v. Schneider*, 131 S. Ct. 3091, 3091 (2011); *Am. Home Prods. Corp. v. Ferrari*, 131 S. Ct. 1567, 1567 (2011); *State Farm Mut. Auto. Ins. Co. v. Willes*, 551 U.S. 1111, 1111 (2007); *see also Lawrence v. Chater*, 516 U.S. 163, 166 (1996) (noting that the Court has “GVR’d in light of a wide range of developments, including [its] own decisions”); *id.* at 181 (Scalia, J., dissenting) (“We regularly hold cases that involve the same issue as a case on which certiorari has been granted and plenary review is being conducted *in order that* (if appropriate) they may be ‘GVR’d’ when the case is decided.”).

Because this case raises the same question presented in *Martin*, the Court should follow that course here. Under its normal scheduling practices, the Court will likely consider this petition and the *Martin* petition at the same conference. If it should grant

review in *Martin*, then it should at a minimum hold this case pending resolution of *Martin* on the merits.

CONCLUSION

The petition should be granted. Alternatively, the petition should be held pending resolution of *Martin*.

Respectfully submitted,

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