

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

Amy C. Nerenberg
Acting Clerk of Court

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March 23, 2016

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 13-14590-U

Case Style: Earl Graham v. R.J. Reynolds Tobacco Company, et al

District Court Docket No: 3:09-cv-13602-MMH-JBT

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause.

For the purpose of the upcoming en banc rehearing in the above referenced case, the court desires for counsel to focus on their briefs the following issues:

- (1) Does the line of Florida cases beginning with *R.J. Reynolds Tobacco Company v. Engle*, 672 So. 2d 39 (Fla. App. 1996) ("*Engle I*"), effectively ban the sale of cigarettes as a matter of state law?
- (2) Is the Florida Supreme Court's holding in *Engle v. Liggett Group, Inc.*, 945 So. 2d 1246 (Fla. 2006) ("*Engle III*"), granting "res judicata effect" to jury findings imposing liability against the major American tobacco companies as clarified in *Philip Morris USA, Inc. v. Douglas*, 110 So. 3d 419 (Fla. 2013), in conflict with and therefore preempted by federal law?
- (3) If the *Engle III* holding is not preempted, would giving effect to that holding violate the tobacco companies' rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution notwithstanding the panel's holding in *Walker v. R.J. Reynolds Tobacco Company*, 734 F.3d 1278 (11th Cir. 2013)?
- (4) Does *Austin v. Tennessee*, 179 U.S. 343, 21 S. Ct. 132 (1900), inform the resolution of Questions (1) through (3)?

APPELLANTS' EN BANC BRIEFS ARE TO BE SERVED AND FILED ELECTRONICALLY ON OR BEFORE FRIDAY, APRIL 22, 2016 BY 5:00 P.M. APPELLEE'S EN BANC BRIEF

SHALL BE SERVED AND FILED ELECTRONICALLY ON OR BEFORE MONDAY, MAY 23, 2016 BY 5:00 P.M. Any en banc reply brief shall be filed electronically on or before Tuesday, June 7, 2016 by 5:00 p.m. NO EXTENSIONS WILL BE GRANTED. 20 copies of the en banc briefs should be filed (appellants in blue covers, appellees in red covers and any reply brief in gray covers). The parties are expected to insure that all other parties receive a copy of their briefs before the close of business on the day of filing. **NO TIME FOR MAILING SHALL BE ALLOWED.** The filing of an en banc amicus brief is governed by 11th Cir.R.35-8.

All counsel are requested to submit 20 copies of their original panel briefs, appendix and supplemental authorities prior to 5:00 p.m., Friday, April 22, 2016.

Oral argument will be conducted on Tuesday, June 21, 2016 in Atlanta, Georgia at 9:00 a.m.

Sincerely,

AMY C. NERENBERG, Acting Clerk of Court

Reply to: Jenifer L. Tubbs
Phone #: 404-335-6166 or 404-335-6131

BR-1CIV Civil appeal briefing ntc issued