

IN THE SUPREME COURT OF FLORIDA

UNITED INSURANCE COMPANY OF  
AMERICA; THE RELIABLE LIFE  
INSURANCE COMPANY; MUTUAL  
SAVINGS LIFE INSURANCE COMPANY;  
and RESERVE NATIONAL LIFE  
INSURANCE COMPANY,

PETITIONERS,

v.

Case No.: SC20-1306  
L.T. Nos.: 1D18-2114,  
2016-CA-001009

JIMMY PATRONIS, in his official  
capacity as Chief Financial Officer  
of the State of Florida, and the  
FLORIDA DEPARTMENT OF  
FINANCIAL SERVICES,

RESPONDENTS.

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**AMICUS BRIEF OF THE NATIONAL ASSOCIATION  
OF UNCLAIMED PROPERTY ADMINISTRATORS  
IN SUPPORT OF JIMMY PATRONIS AND THE FLORIDA  
DEPARTMENT OF FINANCIAL SERVICES**

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M. DREW PARKER  
FL Bar No. 0676845  
Email: dparker@radeylaw.com  
Secondary:  
    dgueltzow@radeylaw.com  
Radey Law Firm  
PO Box 10967  
Tallahassee, FL 32302-2967  
Phone: (850) 425-6654  
Fax: (850) 425-6694

LYNDEN LYMAN  
Admitted Pro Hac Vice  
Email:  
    lynden@unclaimedadvisor.com  
20A Westvale Meadow  
Concord, MA 01742  
Phone: (978) 369-9262  
Fax: (978) 405-5127

**COUNSEL FOR AMICUS CURIAE,  
NATIONAL ASSOCIATION OF  
UNCLAIMED PROPERTY  
ADMINISTRATORS**

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## **I. IDENTITY OF THE AMICUS CURIAE AND ITS INTEREST IN THE CASE**

The issues presented in the matter *sub judice* concern the conditions under which unpaid life insurance proceeds may be presumed unclaimed and, therefore, subject to report and remittance to the state under the Florida Disposition of Unclaimed Property Act, chapter 717, Florida Statutes (2020) (“DUPA”), as amended by Chapter 2016-219, Laws of Florida (the “Amendments”). The *amicus* submitting this brief, the National Association of Unclaimed Property Administrators (“NAUPA”), has a significant interest in the nationwide administration of state unclaimed property laws, including those pertaining to unclaimed insurance benefits, which are implicated by this appeal.

NAUPA is a non-profit organization affiliated with the National Association of State Treasurers. Members represent all states, the District of Columbia, the Commonwealth of Puerto Rico, Virgin Islands of the United States and international governmental entities. NAUPA seeks to promote and strengthen unclaimed property administration and interstate cooperation in order to enhance the return of unclaimed property to rightful owners and provide a forum

for the open exchange of information and ideas. The issues presented in this case are important to NAUPA and its members because they impact the administration of unclaimed property laws in all states, and not merely in Florida.

NAUPA has grave and realistic concerns that if the Amendments are not upheld, large numbers of death benefits will go unpaid and unreported in Florida and potentially many other states. NAUPA, therefore, intercedes in this action as *amicus* in order to assist the Court in recognizing the importance of beneficiaries receiving the death benefits they are due in a timely manner as intended, rather than allowing insurance companies to hold on to these proceeds for decades after the insureds have died and significantly decreasing the likelihood that beneficiaries will ever be located and paid.

## **II. SUMMARY ARGUMENT**

The Amendments, enacted unanimously by the Florida Legislature in 2016, provide that: (i) life insurance proceeds are presumed unclaimed if left unpaid five years after the date of death of the insured; (2) life insurance companies must compare their policy records to the United States Social Security Administration's Death Master File or a similar database ("DMF") in order to identify



deceased insureds; and (3) insurance companies must attempt to locate the beneficiaries of deceased insureds identified through DMF comparisons. See §§717.107(1), (8)(a), and (9), Fla. Stat. The Amendments ensure that insurance companies fulfill their obligations and live up to the promises that they have made to their customers to provide for their loved ones after they are gone.<sup>1</sup> As explained in Respondents' brief, Petitioners' claim fails because they do not allege that the Amendments deprive them of any constitutionally protected right without due process of law. NAUPA respectfully submits that the Court should uphold the District Court's ruling on this basis and others, including the following.

First, the Amendments are consistent with laws that have been enacted across the country to rectify an industry-wide problem that has resulted in significant amounts of death benefits going unpaid

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<sup>1</sup> See, e.g., Press Release, *CFO Atwater Applauds Governor Scott for Signing Life Insurance Legislation* (Apr. 15, 2016), available at <https://www.myfloridacfo.com/sitePages/newsroom/pressRelease.aspx?id=4668> (last visited Aug. 12, 2021) (explaining that the Amendments “ensure[] that hundreds of thousands of Florida families will gain access to the life insurance benefits that were set aside by their loved one[s] many years ago”).

for years or decades after the insureds have died.<sup>2</sup> Application of such legislation to policies that were issued prior to a law's enactment has never been found to be impermissible where the legislature has expressed an intent for them to be applied retroactively.

Second, the Amendments are consistent with U.S. Supreme Court precedent, previously codified by DUPA, that allows unpaid life insurance proceeds to be presumed unclaimed based on the death of the insured alone, even though the beneficiary has not filed a claim or provided proof of death. Moreover, the Amendments provide remedial mechanisms to ensure that insurers comply with their obligations to identify and report all unclaimed death benefits in their possession.

Third, the Amendments further DUPA's underlying remedial purpose of protecting the owners of unclaimed property. In this regard, the Amendments prevent policies from improperly lapsing

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<sup>2</sup> In fact, absent the Amendments many of these benefits will never be paid. Where premium payments are discontinued due to the insured's death but no claim is filed, insurers may use the policy's cash value to continue to pay themselves premiums. Once the cash value has been depleted, the policy will lapse or terminate with no death benefit ever being paid or reported. See further discussion at pages 25-26, *infra*.

after the insureds have died due to the application of nonforfeiture provisions, and provide a method for unpaid death benefits to be identified so that efforts can be made to locate and pay the beneficiaries. Unclaimed death benefits are only reported to the State if these efforts prove unsuccessful, and once remitted the proceeds may be claimed by the beneficiaries in perpetuity. Additionally, the Florida Department of Financial Services (“DFS”) routinely returns year-over-year record setting amounts of unclaimed property to its owners and is committed to “returning every dime of unclaimed property back to its rightful owner.” *Id.* In short, the Amendments prevent insurers from being allowed to reap an unjust windfall,<sup>3</sup> while maximizing the chances that beneficiaries will be paid the money they are owed.

### **III. ARGUMENT**

#### **A. The Amendments are Consistent with Laws Enacted in Numerous States Within the Past Several Years**

Florida does not stand alone in amending its laws to address the problem of unclaimed life insurance benefits. Since 2012, more

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<sup>3</sup> In addition to having use of funds otherwise payable as death benefits, insurers may deduct premiums from cash surrender values notwithstanding the death of the insured; see footnote 2, *supra*.

than two-thirds of the United States have enacted legislation explicitly requiring insurance companies to compare their policies against the DMF to identify deceased insureds with unpaid policies, and then take measures to contact the beneficiaries, or if a beneficiary cannot be located, remit the proceeds in accordance with the state's unclaimed property laws.

The impetus for enacting such laws was the discovery of a widespread problem involving unpaid death benefits in the life insurance industry, which was revealed in the late 2000s following the initiation of multi-state unclaimed property audits of life insurance companies. It soon became apparent to unclaimed property administrators, and state insurance regulators, that insurers were in possession of a significant number of policies where the insured had died while the policy was still in force, but the benefits had not been paid to the beneficiaries or remitted to the state as unclaimed property. In most cases, the beneficiaries, or their heirs, were unaware that these policies existed. This led to concerted actions by unclaimed property administrators, along with state insurance regulators, to investigate and come up with solutions to

ensure that unclaimed death benefits were timely paid to the rightful owners.

Florida's Office of Insurance Regulation ("FLOIR") has been at the forefront of nationwide efforts to resolve the problem of unpaid death benefits. Indeed, market conduct investigations of life insurance companies conducted by FLOIR in 2009 served as the catalyst for the National Association of Insurance Commissioners' ("NAIC") formation of a special task force of state regulators, chaired by the Florida Insurance Commissioner, to help coordinate regulatory investigations regarding the possible failure of life insurance companies to pay death benefits to beneficiaries of life insurance policies ("NAIC Task Force").<sup>4</sup>

Working with DFS and the Florida Attorney General, FLOIR became "the first insurance regulator in the nation to enter into a regulatory settlement agreement requiring corrective actions

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<sup>4</sup> See FLOIR, *Life Claim Settlement Practices*, available at [https://www.floir.com/sections/landh/life\\_claims\\_settlement\\_practices\\_hearing05192011.aspx](https://www.floir.com/sections/landh/life_claims_settlement_practices_hearing05192011.aspx) (last visited Aug. 12, 2021); see also News Release, *Regulators to Review Life Insurance Payment Practices* (NAIC, May 17, 2011), available at [https://web.archive.org/web/20111220204637/http://www.naic.org/Releases/2011\\_docs/regulators\\_review\\_life\\_payment\\_practices.htm](https://web.archive.org/web/20111220204637/http://www.naic.org/Releases/2011_docs/regulators_review_life_payment_practices.htm) (last visited Aug. 12, 2021).

pertaining to claims settlement practices and the reporting and remitting of unclaimed property.” See FLOIR, “Life Claim Settlement Practices,” *supra*. Subsequently, numerous agreements have been reached between insurance companies and state insurance departments and unclaimed property administrators nationwide, resulting in billions of dollars in death benefits being returned directly by the insurers to beneficiaries, and billions more in unclaimed benefits being turned over to states. *Id.*<sup>5</sup> Significantly, the agreements first reached by FLOIR served as the predicate for the Amendments at issue in this appeal.<sup>6</sup>

The results of regulatory investigations and audits by insurance departments and unclaimed property administrators regarding unpaid death benefits also led the National Conference of Insurance

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<sup>5</sup> See also California State Controller, *Protecting Life Insurance Beneficiaries*, available at [https://www.sco.ca.gov/protecting\\_life\\_insurance\\_beneficiaries.html](https://www.sco.ca.gov/protecting_life_insurance_beneficiaries.html) (last visited Aug. 12, 2021) (listing 28 agreements California and other states have entered into with life insurers).

<sup>6</sup> See Press Release, *CFO Atwater Applauds Governor Scott for Signing Life Insurance Legislation*, *supra* (explaining that passage of the Amendments will ensure that all life insurance companies will be held to the same standard as those who have previously entered into national settlement agreements under Florida’s leadership).

Legislators (“NCOIL”) to take action on this issue.<sup>7</sup> As explained by the NCOIL President at the time, “[c]ontracts should be honored and, where possible, beneficiaries should be located and notified of benefits that are rightfully theirs.” *Id.* Based on this determination, in November 2011 NCOIL announced the adoption of its “Model Unclaimed Life Insurance Benefits Act” (“NCOIL Model Act”), which requires that an insurer compare all of its in-force policies against the DMF to determine if an insured is deceased. As the sponsor of the act elaborated, “[l]ife insurers need to utilize technology at hand, such as the DMF, to close regulatory gaps and to better serve life insurance consumers.”<sup>8</sup>

State legislatures across the country have taken up the mantle to codify the efforts of insurance regulators, controllers and treasurers into law. To date, thirty-five states have enacted

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<sup>7</sup> See Press Release, *NCOIL Seeks Protections for Unclaimed Life Insurance Benefits* (July 17, 2011), available at <http://ncoil.org/wp-content/uploads/2016/04/7202011UnclaimedPropertyPR.pdf> (last visited Aug. 12, 2021).

<sup>8</sup> See Press Release, *NCOIL Model to Ensure Timely Payment of Death Benefits* (Nov. 20, 2011), available at <http://ncoil.org/wp-content/uploads/2016/04/11302011UnclaimedBenefitPR.pdf> (last visited Aug. 12, 2021).

legislation requiring DMF searches by insurance companies. Of those states, twenty-three (including Florida) require insurers to check their life policies retroactively (*i.e.*, all policies that were in-force as of the effective date of the law’s enactment).<sup>9</sup> Five of these states, California, Florida, Illinois, New York, and West Virginia, also require insurers to search lapsed and terminated policies going back a certain number of years.<sup>10</sup> While the laws in some states only apply prospectively (*i.e.*, only to policies issued on or after the date of the

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<sup>9</sup> See, *e.g.*, N.D. Cent. Code §26.1-55-02(1) (requiring comparisons of “in-force life insurance policies” against the DMF).

<sup>10</sup> New York and West Virginia require searching of policies back to at least 1986. See N.Y. Ins. Law §3240(a)(6); Filing Guidance Note (N.Y. State Ins. Dep’t Aug. 11, 2011), available at [https://web.archive.org/web/20120119033314/http://www.dfs.ny.gov/insurance/life/filing\\_guidance\\_08082011.pdf](https://web.archive.org/web/20120119033314/http://www.dfs.ny.gov/insurance/life/filing_guidance_08082011.pdf) (last visited Aug. 12, 2021) (explaining that insurers were required to perform comparisons of all life insurance policies against the DMF that lapsed on or after January 1, 1986); and W. Va. Code §33-13D-2(a). Illinois requires searches of policies back to 2000. See 215 Ill. Comp. Stat. §§185/10, 15, 35. In California the scope of searches of lapsed or terminated policies depends on whether and how long an insurer had been using the DMF for purposes other than identifying deceased insureds. See Cal. Ins. Code §§10509.944(a)(1) and (2).



law's enactment), such was the unambiguous intent of the legislature.<sup>11</sup>

Despite all of these state enactments, going back nearly a decade, there has been only one prior court challenge to the retroactive application of such laws. *See United Ins. Co. of Am. v. Kentucky*, No. 2013-CA-612, 2014 Ky. App. Unpub. LEXIS 1046 (Ky. Ct. App. Aug. 15, 2014).<sup>12</sup> Although the court determined that Kentucky's statute requiring searches for deceased insureds could not be applied retroactively, it did so based on its finding that there was *no express intent of the legislature* to apply the law at issue retroactively. *Id.* at \*7-8, 12. As a result, the court concluded that "we need not discuss the constitutional issues" related to the statute's retroactive application. *Id.*

Significantly, after "extensive debate," NCOIL affirmatively decided to "retain existing retrospective provisions" in its NCOIL Model Act when it revisited this issue in 2014. This debate included

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<sup>11</sup> *See, e.g.*, N.J. Stat. §17B:17-26 ("policy" means a life insurance policy "which is issued on or after the effective date of this act").

<sup>12</sup> This challenge was brought by the same insurance companies that are the Petitioners here.

submissions from various interested parties – including Kemper Corporation (the parent company of Petitioners here), the National Alliance of Life Companies, and the American Council of Life Insurers (both amicus curiae in support of Petitioners), as well as NAUPA, among others.<sup>13</sup>

As demonstrated by the foregoing, it is clear that the Amendments are consistent with legislation that has been enacted and retroactively applied throughout the country to address the problem of unclaimed death benefits. Should this Court rule in favor of Petitioners on this appeal, such a decision would become *the only instance nationwide where comparable legislation has been found not to apply retroactively despite the legislature’s expressed intent to the contrary*.

**B. The Amendments Are Consistent With U.S. Supreme Court Precedent, Codified By DUPA Prior to Being Amended**

As the District Court noted, “[t]he Legislature directed that the ‘amendments made by this act are remedial in nature and apply

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<sup>13</sup> See Press Release, *NCOIL Task Force Enhances Unclaimed Property Model* (July 14, 2014), available at <http://ncoil.org/wp-content/uploads/2016/04/unclaimedpropertytaskforcePR.pdf> (last visited Aug. 12, 2021).

retroactively.” *Patronis v. United Ins. Co. of Am.*, 299 So. 3d 1152, 1155 (Fla. 1st DCA 2020). Nevertheless, Petitioners argue that the Amendments cannot be considered remedial (and therefore cannot be applied retroactively) because they: (i) impermissibly impose new obligations and duties on insurers beyond those contained in their policies, which condition the obligation to pay death benefits upon receipt of a claim and proof of death; and (ii) impermissibly shorten the dormancy period by triggering it upon the death of the insured, rather than upon notice received through the claims process or upon the insured reaching the limiting age. *See* Pet. Brf. at 24, 27. Consideration of DUPA prior to the Amendments and other relevant precedent demonstrates that both of these positions are incorrect.

Specifically, the Amendments are consistent with well-settled authority recognizing that, although an individual beneficiary may be required to file a claim and provide proof of death before receiving payment, satisfaction of these conditions *is not required* for unclaimed death benefits to be presumed unclaimed under state unclaimed property laws. In *Connecticut Mutual Life Ins. Co. v. Moore*, 333 U.S. 541 (1948), the U.S. Supreme Court affirmed the constitutionality of unclaimed property statutes making life

insurance proceeds subject to reporting and remittance based on the death of the insured alone, notwithstanding the fact that the beneficiary has not provided proof of death or met other contingencies in the policy. The appellant insurance companies in *Connecticut Mutual* had argued that the statute at issue was unconstitutional because “the policy terms provide that the insurer shall be under no obligation until proof of death or other contingency is submitted and the policy surrendered.” *Id.* at 545-46.<sup>14</sup> The Court was not persuaded, finding:

Unless the state is allowed to take possession of sums in the hands of the companies classified by [the unclaimed property law] as abandoned, the insurance companies would retain moneys contracted to be paid on condition and which normally they would have been required to pay. ... *The fact that claimants against the companies would under the policies be required to comply with certain policy conditions does not affect our conclusion.* The state may more properly be custodian and beneficiary of abandoned property than any person. ... *When the state undertakes the protection of abandoned claims, it would be beyond a reasonable requirement to compel the state to comply with conditions that may be quite proper as between the*

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<sup>14</sup> Petitioners make virtually the same argument here, contending that under established insurance law they were “entitled to rely upon the beneficiary or the insured’s estate to notify them of an insured’s death and were obligated to make payment only after receipt of a claim and proof of death.” Pet. Brf. at 24.

*contracting parties*. The state is acting as a conservator, not as a party to a contract.

333 U.S. at 546-47 (emphasis added).

DUPA codifies the Supreme Court's holding in *Connecticut Mutual*. Specifically, section 717.102(2), both before and after the Amendments, provides that property is payable under DUPA "notwithstanding the owner's failure to make demand or present any instrument or document required to receive payment." As explained in the Commissioner's Comment to Section 2 of the Uniform Unclaimed Property Act (1981) ("1981 Act"), which Florida adopted through its enactment of section 717.102(2), this provision "is intended to make clear that property is reportable notwithstanding that the owner, who has lost or otherwise forgotten his or her entitlement to property, fails to present to the holder evidence of ownership or to make a demand for payment." See 1981 Act, §2, Comment (citing *Conn. Mut.*, 333 U.S. 541).

The application of section 717.102(2) to unclaimed death benefits clearly is established by the Comment to subsection 2 of the 1981 Act, which explicitly provides that "no possible harm can result in requiring that holders turn over the property, *even though the*

*owner has not presented proof of death or surrendered the insurance policy.” See 1981 Act, §2, Comment (emphasis added). The Amendments are entirely consistent with both this Comment and Connecticut Mutual and should be construed as remedial clarifications of the existing obligations of insurance companies to ensure that they take reasonable steps to identify and report unclaimed death benefits in their possession.*

Florida is not alone in seeking to enforce this precedent. This is the approach that has been previously advocated by NAUPA.<sup>15</sup> Significantly, in 2015, the Supreme Court of Appeals of West Virginia (the “WV Court”) overturned a decision dismissing a complaint brought by the West Virginia Treasurer against 63 national life insurers for failing to use the date of death to determine the dormancy period and failing to employ procedures, such as searching the DMF, to determine if insureds had died, in violation of the West

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<sup>15</sup> See NAUPA Resolution, *Supporting the Importance of Ensuring That Unclaimed Property Laws Concerning Unclaimed Death Benefits Due Under Life Insurance Policies Adequately Protect Consumers* (July 25, 2018), available at [https://cdn.ymaws.com/member.nast.org/resource/collection/0DBFE1B8-56B4-4705-B0FB-C09CBC0480F2/NAUPA\\_Unclaimed\\_Life\\_Insurance\\_Proceeds\\_Resolution\\_final.pdf](https://cdn.ymaws.com/member.nast.org/resource/collection/0DBFE1B8-56B4-4705-B0FB-C09CBC0480F2/NAUPA_Unclaimed_Life_Insurance_Proceeds_Resolution_final.pdf) (last visited Aug. 12, 2021).

Virginia Uniform Unclaimed Property Act of 1997 (the “WV UPA”). *Perdue v. Nationwide Life Ins. Co.*, 777 S.E.2d 11 (W. Va. 2015). In doing so, the WV Court analyzed both Section 2 of the 1995 Uniform Unclaimed Property Act (“1995 Act”) (which is virtually identical to Section 2 of the 1981 Act) and its underpinnings in *Connecticut Mutual*,<sup>16</sup> and held that “in the case of life insurance policy proceeds, the . . . dormancy period leading to the presumption of abandonment commences with the death of the insured.” *Id.* at 19. Additionally, although the WV Court did not find that West Virginia’s unclaimed property laws specifically required insurers to search the DMF, it held that insurers were required to “account for and turn over [unclaimed death benefits] to the Treasurer.” *Id.* The Court went on to explain that “[e]ach insurer is free to determine how it will investigate and discover whether insureds are yet living . . . [and] an insurer may well choose to review the DMF as the best or most efficient way to perform its duties under the Act.” *Id.*

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<sup>16</sup> The WV UPA was based on the 1995 Act. However, as the WV Court noted, the “1995 version of section 2(e) and its attendant commentary regarding *Moore* were reproduced almost verbatim from the 1981 version,” which underlies DUPA. *Id.* at 17.

Consistent with the underlying conclusions reached by the Court in *Perdue*, the Amendments merely specify the processes insurers issuing policies in Florida are required to follow to identify and report unclaimed death benefits in their possession. Moreover, these processes already existed in some form under prior Florida law. In this regard, under DIPA prior to amendment, an insurance company was required to report and remit unclaimed death benefits when it “knows that the insured or annuitant has died,” even absent receipt of “proof of death.” §717.107(3)(a), Fla. Stat. Thus, insurance companies were already obligated to report unclaimed death benefits based on the death of the insured even though contractual terms of the policy had not been satisfied. Likewise, under the pre-existing law, insurance companies were already under an obligation to take steps to make sure that they were reporting and remitting all unclaimed death benefits in their possession. *See* §717.117, Fla. Stat. (requiring all entities, including insurance companies, to annually report all unclaimed property in their possession to DFS).

Additionally, Florida’s pre-existing insurance laws recognized that a life insurance policy “becomes a claim by the death of the insured.” §627.461, Fla. Stat. Insurers were also required to



“implement standards for the proper investigation of claims” and were prohibited from “denying claims without conducting reasonable investigations based upon available information.” §626.9541(1)(i)(3)(a), (d), Fla. Stat. Finally, as the District Court recognized, insurance companies already had a duty of “conducting reasonable searches and using prudent means of locating insureds and beneficiaries” under the existing “due diligence” requirements of DUPA. *Patronis*, 299 So. 3d at 1159-60 (citing §717.109(9), Fla. Stat.). Thus, the Amendments merely provide remedial mechanisms for complying with pre-existing obligations and duties under Florida law.

Equally unfounded is Petitioners’ argument that retroactively requiring calculation of the dormancy period from the insured’s date of death impermissibly shortens the dormancy period (even though it remains 5 years). Petitioners have acknowledged they have no vested rights in unclaimed property (*see Patronis*, 299 So. 3d at 1159). The U.S. Supreme Court has long held that entities do not have any right to unclaimed property in their possession and states may enact or amend unclaimed property laws without violating any constitutional principles. *See Provident Inst. for Sav. v. Malone*, 221

U.S. 660, 665 (1911) (rejecting argument that unclaimed property statute requiring banks to turn over deposits held in inactive savings accounts violated due process); *Security Sav. Bank v. California*, 253 U.S. 282, 286 (1923) (same); *Anderson Nat’l Bank v. Lockett*, 321 U.S. 233, 242 (1944) (holding that bank “can interpose no due process or contract clause objection” to statute lawfully requiring unclaimed deposits be turned over to state); see also *Delaware v. New York*, 507 U.S. 490, 502 (1993) (“a law requiring the delivery of [unclaimed] deposits affects no property interest belonging to the bank”). Based on these principles, courts have held that retroactive application of a statute shortening the dormancy period for unclaimed property does not violate constitutional protections. See, e.g., *American Express Travel Related Serv., Inc. v. Sidamon-Eristoff*, 669 F.3d 359, 368 (3d Cir. 2012).

In short, Petitioners’ complaint is that they did not expect that the Florida Legislature would specify the reasonable steps insurers must take based on widely available technology to comply with their existing obligations to identify and report unclaimed property in their

possession.<sup>17</sup> Florida law, however, is clear that retroactive application of a statute that merely “upsets expectations based in prior law” is not unconstitutional. *Sowell v. Panama Commons L.P.*, 192 So. 3d 27, 31 (Fla. 2016) (quoting *Landgraf v. USI Film Prods.*, 511 U.S. 244, 269 (1994)).

### **C. The Amendments Further the Remedial Purposes of DUPA**

As the District Court recognized, the “unclaimed property laws are inherently remedial in nature and generally understood as advancing a state’s strong interest in protecting consumers of financial and insurance services.” *Patronis*, 299 So. 3d at 1157. The District Court also acknowledged that the “long-standing legislative

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<sup>17</sup> Contrary to the assertions by amicus curiae supporting Petitioners, life insurance companies have broadly accepted regulatory and statutory measures to require insurers to perform DMF comparisons, which are not unduly burdensome or costly. *See, e.g.*, New York State Dep’t of Fin. Servs., Letter to Unclaimed Benefits Model Drafting (A) Subgroup of the National Association of Insurance Commissioners (July 13, 2016), available at [https://www.naic.org/documents/committees\\_a\\_unclaimed\\_benefits\\_sg\\_exposure\\_ny\\_state\\_comments.pdf](https://www.naic.org/documents/committees_a_unclaimed_benefits_sg_exposure_ny_state_comments.pdf) (last visited Aug. 12, 2021) (“since the promulgation of the New York statutes, there has not been a request for exemption in performing the quarterly cross checks;” “no insurers have indicated to the Department that this practice would create financial or other hardship, or that the costs are excessive in performing the DMF cross checks”).

purpose underlying chapter 717” is that it “be applied and construed as to effectuate its general purpose of protecting the interest of missing owners of property.” *Id.* (quoting §717.139(1), Fla. Stat.). Disregarding the foregoing, Petitioners, as well as the organizations submitting amicus curiae briefs in support of Petitioners, overlook and/or misstate fundamental aspects of the unclaimed property laws.

As an initial matter, the motivation of the Amendments is not to generate a “windfall” for the State to fill budgetary gaps, nor are the unclaimed death benefits required to be remitted under the Amendments “ultimately spent by the State even though they do not belong to the State.” ACLI Brf. at 11-12.<sup>18</sup> Rather, the Amendments are a “response to industry practices and their adverse effects on consumers.” *Patronis*, 299 So. 3d at 1154-55.

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<sup>18</sup> Like most states, unclaimed property is not a significant revenue source for Florida. *See, e.g.,* G. Allen Mayer, *Unclaimed Property Programs Are Alive and Well*, 101 TAX NOTES STATE 615 (Aug. 9, 2021), available at <https://www.taxnotes.com/tax-notes-state/unclaimed-property/unclaimed-property-programs-are-alive-and-well/2021/08/09/76xx7> (last visited Aug. 12, 2021) (explaining that unclaimed property is not a significant source of revenue for any state other than Delaware).

Moreover, unclaimed death benefits are only remitted to the State after efforts to locate and pay the beneficiaries have been made and proven unsuccessful. See §§717.107(9)(d), 717.117(4), Fla. Stat. Additionally, after unclaimed property has been turned over to the State, DFS is required to undertake further efforts to locate the owners of the property. See §717.118(1), Fla. Stat. As a result of these efforts, DFS routinely returns record-breaking amounts of unclaimed property to its owners after it has been remitted to the State.<sup>19</sup>

It is also important to understand that DUPA, like all modern unclaimed property laws, is entirely custodial in nature, with the State assuming custody of the property and taking on the obligation to honor the claim of the rightful owner in perpetuity.<sup>20</sup> The owner

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<sup>19</sup> See, e.g., Press Release, *CFO Jimmy Patronis Closes Out 2020-2021 Fiscal Year by Breaking Annual Record in Returns in Unclaimed Property* (July 19, 2021), available at <https://www.myfloridacfo.com/sitePages/newsroom/pressRelease.aspx?id=5940> (last visited Aug. 12, 2021) (announcing that DFS has returned more than \$1.3 billion in unclaimed property to owners since 2017 alone).

<sup>20</sup> See, e.g., Prefatory Note, Revised Uniform Unclaimed Property Act (2016) (explaining that although “escheat” and “unclaimed property” are often used interchangeably, all of the Uniform Unclaimed Property Acts are custodial acts); G. Allen Mayer, *Unclaimed Property*

of the reported property may recover its full value, without deduction of any fee, by filing a claim with the State at any time. *See* §§717.124, 717.139, Fla. Stat.

It has also long been understood and expected that the State, rather than the holder, should receive the benefits from holding property until the owners can be located. *See, e.g., Standard Oil v. New Jersey*, 341 U.S. 428, 436 (1951) (unclaimed property “is used for the general good rather than the chance enrichment of particular individuals or organizations”). Thus, section 717.139(1), Florida Statutes explicitly provides “that the benefit of all unclaimed and abandoned property shall go to the people of the state” until it can be returned to its rightful owners.

Additionally, the District Court did not find that the change to the dormancy period calculation reduced the number of years that insurers were “entitled” to hold and earn interest on unclaimed death benefits, as Petitioners contend. Pet. Brf. at 28. Dormancy periods established by unclaimed property laws are set, not for the benefit of

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*Programs Are Alive and Well*, *supra* (explaining custodial nature of the unclaimed property laws).

the holders, but to protect the interests of the property owners. *See, e.g.,* 1981 Act, §2, Comment (dormancy periods vary based on expectations of the length of time in which owners will claim a particular property type, and the state’s goal of maximizing the amount of property that is able to be returned to owners).

Also incorrect is the assertion that the Amendments merely hasten the remittance of property that would always be reported and render the “limiting age” provision of section 717.107(3)(d), Florida Statutes a nullity. In fact, due to application of “nonforfeiture provisions” contained in life insurance policies, “[i]f a life insurance policyholder dies and stops paying premiums, the company may continue to deduct the premiums from the account value until the value is gone.”<sup>21</sup> As a result, if insurers are not required to identify situations where insureds have died and no claim has been made, many unclaimed death benefits may never be reported. By calculating the dormancy from the date of death and requiring DMF

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<sup>21</sup> *See* News Release, *New York Life Insurers Directed to Identify Deceased Policyholders and Pay Unpaid Death Benefits* (July 5, 2011), available at <https://web.archive.org/web/20110713225708/http://www.ins.state.ny.us/press/2011/p1107051.htm> (last visited Aug. 12, 2021).

comparisons, the Amendments maximize the chance that owners of unclaimed death benefits can be located and paid the benefits they are owed, either before or after the property is remitted to the State. Further, the presumption that the insured died upon reaching the “limiting age” continues to serve, as it always has, as a backstop to be applied in situations where the death of the insured cannot be identified.

#### **IV. CONCLUSION**

For these reasons, the Amicus urges that this Court uphold the District Court’s holding that the Amendments may be applied retroactively as the Florida Legislature intended.



## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on August 16, 2021, a true and correct copy of the foregoing was filed electronically and served to all parties on the attached service list through the Court's electronic portal.

/s/ M. Drew Parker

M. Drew Parker

### **SERVICE LIST**

Carol Lynn Thompson  
Nicole M. Ryan, Esq.  
Sidley Austin LLP  
555 California St., Suite 2000  
San Francisco, CA 94104  
cthompson@sidley.com  
[nicole.ryan@sidley.com](mailto:nicole.ryan@sidley.com)  
**(Counsel for Petitioners)**

Daniel E. Nordby  
Shutts & Bowen, LLP  
215 So. Monroe St., Suite 804  
Tallahassee, FL 32301  
dnordby@shutts.com  
[mpoppell@shutts.com](mailto:mpoppell@shutts.com)  
**(Counsel for Petitioners)**

Timothy G. Schoenwalder  
Meenan P.A.  
300 Duval St., Suite 410  
Tallahassee, FL 32301  
ts@meenanlawfirm.com  
**(Counsel for Amicus Curiae  
Thrivent Financial for  
Lutherans)**

Kenneth B. Bell  
Joseph W. Jacquot  
Lauren V. Purdy  
John W. Terwilleger  
Gunster, Yoakley & Stewart, P.A.  
215 S. Monroe St., Suite 601  
Tallahassee, FL 32301-1804  
kbell@gunster.com  
jjacquot@gunster.com  
lpurdy@gunster.com  
jterwilleger@gunster.com  
[awinsor@gunster.com](mailto:awinsor@gunster.com)  
**(Counsel for Respondents)**

Andrew B. Kay  
P. Randolph Seybold  
Venable LLP  
600 Massachusetts Avenue, NW  
Washington, DC 20001  
ABKay@Venable.com  
RSeybold@Venable.com  
**(Counsel for Amicus Curiae)**

Maria Elena Abate  
L. Michael Billmeier, Jr. Colodny  
Fass  
1401 Northwest 136th Ave.,  
Suite 200  
Sunrise, FL 33323  
mabate@colodnyfass.com  
mbillmeier@colodnyfass.com  
**(Counsel for Amicus Curiae  
American Property Casualty  
Insurance Association)**

Christine R. Davis  
Carlton Fields, P.A.  
215 S. Monroe St., Suite 500  
Tallahassee, FL 32301  
[cdavis@carltonfields.com](mailto:cdavis@carltonfields.com)  
[sdouglas@carltonfields.com](mailto:sdouglas@carltonfields.com)  
**(Counsel for Amicus Curiae  
National Alliance of Life  
Companies)**

**Thrivent Financial for  
Lutherans)**

Katherine E. Giddings  
Diane G. DeWolf  
Akerman LLP  
106 East College Avenue,  
Suite 1200  
Tallahassee, FL 32301  
katherine.giddings@akerman.  
com  
diane.dewolf@akerman.com  
elisa.miller@akerman.com  
myndi.qualls@akerman.com  
**(Counsel for Amicus Curiae  
ACLI and FIC)**

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/s/ M. Drew Parker  
M. Drew Parker