Case No. S259215

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

BLAKELY MCHUGH AND TRYSTA M. HENSELMEIER
Plaintiffs and Appellants,
vs.
PROTECTIVE LIFE INSURANCE COMPANY
Defendant and Respondent.

AFTER DECISION BY THE COURT OF APPEAL OF THE STATE OF CALIFORNIA,
FOURTH DISTRICT, DIVISION ONE, CASE NO. D072863

(ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO
THE HONORABLE JUDITH M. HAYES
CASE NO. 37-2014-00019212-CU-IC-CTL)

RESPONDENT'S CONSOLIDATED ANSWER TO AMICUS BRIEFS

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I.

INTRODUCTION

The amicus briefs supporting Protective leave no doubt that the only way to read Assembly Bill 1747's unambiguous text, consistent with precedents of this Court and contemporaneous interpretations by Department of Insurance officials, is as not applying to policies issued and delivered before the statute's effective date. Meanwhile, the amicus briefs supporting Plaintiffs—all filed by persons or groups claiming to have been involved in helping Assembly Bill 1747's author draft the bill—say almost nothing about the statute's text. The considerations they cite—in large part, unsupported assertions about their own intent—are unpersuasive in their own right. None of these amici purports to know what the Legislature as a whole intended, and none explains how the text from Assembly Bill 1747 supports the result they seek.

II.

LEGAL ARGUMENT

The amicus briefs supporting Plaintiffs offer little insight on the questions presented by this case. They do not mention the *Interinsurance Exchange* presumption that policies are governed by the laws in place at the time they are issued. They do not deny that the Legislature did not include express language overcoming that presumption in Assembly Bill 1747. They do not point to any statements in the legislative history that reflect the Legislature's intent, unambiguous or otherwise, to apply the statute to policies issued before its effective date. And they do not explain why the repeated and consistent interpretations of this statute from Department of Insurance officials are not worthy of respect. The amici's arguments do not change the result to which all the relevant interpretive considerations point.

A. Under this Court's decision in *Interinsurance Exchange*, changes to the Insurance Code do not apply to existing policies unless the Legislature expressly so declared.

It is telling that none of the amici supporting Plaintiffs mentions the precedent that is the starting point for the analysis in this case. In *Interinsurance Exchange of Auto Club v. Ohio Casualty Insurance*, this Court established a presumption that "insurance policies are governed by the statutory and decisional law in force at the time the policy is issued." (ABOM 29–30, quoting *Interinsurance Exch. of Auto. Club of S. Cal. v. Ohio Cas. Ins.*

Co. (1962) 58 Cal.2d 142, 148 (*Interinsurance Exch.*).) To overcome that presumption and apply a new statute to an existing insurance policy, this Court explained, the Legislature must have "expressly so declared" its intent to do so. (ABOM 30, quoting *Interinsurance Exch.*, 58 Cal.2d at p.149.)

The amici supporting Plaintiffs not only fail to mention *Interinsurance Exchange*, but like Plaintiffs before them, have the rule backwards. California Advocates for Nursing Home Reform declares that "[s]ince the legislative record does not explicitly state that AB 1747 was *not* meant to be retroactive, it must be concluded that there was no such intention on the part of the legislators." (CANHR Br. 13, italics added.) As Protective explained in its Answer Brief on the Merits, the presumption works the other way around. "'[S]ilence as to retroactive application' makes 'the presumption of prospective application . . . controlling.'" (ABOM 35, quoting *In re Marriage of Ludwig* (1976) 58 Cal.App.3d 744, 749.)

Another amicus, Neil Granger, also erroneously flips the presumption. He argues that the Legislature must have wanted the statute's grace period and notice requirements to apply to "older policies" because it did not include language "exempt[ing]" them. (Granger Br. 10.) California law instead required the statutory language to "expressly" include those policies, if the Legislature wanted that result. (*Interinsurance Exch.*, *supra*, 58 Cal.2d at p.149.) That basic rule, as the U.S. Chamber of Commerce ob-

serves in its amicus brief, "'is deeply rooted in [California] jurisprudence.'" (Chamber Br. 10, quoting *McClung v. Emp't Dev. Dep't* (2004) 34 Cal.4th 467, 476.)

B. The only reasonable reading of Assembly Bill 1747's text is that its new requirements do not apply to policies issued and delivered before the effective date.

As Protective explained in its Answer Brief on the Merits, Assembly Bill 1747's text "does not—even arguably—contain the 'express[]' language Plaintiffs would need to overcome the anti-retroactivity principle." (ABOM 35, quoting *Interinsurance Exch.*, 58 Cal.2d at p.149.) Just the opposite is true: the Legislature used clear language demonstrating that the statute applies to only those policies issued on or after its January 1, 2013 effective date. (See ABOM 36–48.) California Advocates for Nursing Home Reform is mistaken when it claims that Protective has "posited" that Assembly Bill 1747's text is "ambiguous." (CANHR Br. 8.) As Protective has always said, the text is unambiguously prospective. "[T]he only reasonable conclusion," Protective explained in its Answer Brief on the Merits, "is that the statute's three core requirements apply only to policies issued and delivered after its effective date." (ABOM 48.)

Plaintiffs' amici say little about the text setting out these three requirements, which points against application to policies issued before the statute's effective date. Amici offer no theory as to how the first requirement—that "applicant[s]" be "given the right to designate" third parties to receive lapse notices—can operate on older policies that already were applied for and issued.

(See ABOM 36–40, citing Ins. Code, § 10113.72, subd. (a).) Nor do amici show how the third requirement, regarding the mailing of notices—which appears in subdivisions cross-referencing the "applicant" subdivision—could sensibly apply to policies applied for and issued before the effective date. (See ABOM 46–48, citing Ins. Code, § 10113.71, subd. (b), § 10113.72, subd. (c).)

As for the statute's other core requirement—that "[e]very life insurance policy issued or delivered in this state shall contain a provision" with a 60-day grace period—one amicus, Granger, does offer a response. (Ins. Code, § 10113.71, subd. (a), as amended.) He argues that "[w]e"—purportedly he and the bill's author—"included the language 'issued or delivered' into AB 1747 to confirm that this law applied to life policies issued either before or after January 1, 2013." (Granger Br. 11.) That argument makes no sense and gets California law wrong again. As the American Council of Life Insurers explains in its amicus brief, the Court of Appeal in *Ball v. California State Automobile Association Inter-Insurance Bureau* "held that 'the terms 'issued and delivered' 'must refer to the original issuance of the policy,'" such that legislation using those terms "'embrace[s] only policies thereafter issued or delivered'" rather than "'purport[ing] to affect existing contracts.'" (ACLI Br. 16, quoting *Ball v. Cal. State Auto. Assn. Inter-Ins. Bureau* (1962) 201 Cal.App.2d 85, 88 (*Ball*).) In other words, *Ball*—another important case Plaintiffs' amici do not mention—held that "issued and delivered" means the opposite of what Granger posits. The Legislature was "'presume[d]'" to

be aware of this case law when it wrote the grace-period requirement and included the phrase "issued or delivered." (ABOM 38–39, quoting *Foley v. Interactive Data Corp*. (1988) 47 Cal.3d 654, 675.)

These textual considerations mean that Assembly Bill 1747, taken as a whole, can be understood only as not applying to policies that already had been issued as of the statute's effective date. Importantly, Plaintiffs' amici do not dispute that the Court "'interpret[s] related statutory provisions on the assumption that they each operate in the same manner.'" (ABOM 40, quoting *Grafton Partners L.P. v. Superior Court* (2005) 36 Cal.4th 944, 960.) Their theory is, in fact, that *every* provision in Assembly Bill 1747 applied to already-issued policies. That theory, for all the reasons Protective already has given, cannot be reconciled with the statute's plain text.

C. Reading Assembly Bill 1747's new requirements as not applying to policies issued and delivered before the effective date is consistent with the statute's intent and purpose.

Assembly Bill 1747's language makes almost everything in the briefs filed by Plaintiffs' amici irrelevant to the task at hand. As the Court of Appeal noted, when a statute's text "is unambiguous and provides a clear answer," a court "need go no further." (Opn. 8, quoting *Microsoft Corp. v. Franchise Tax Bd.* (2006) 39 Cal.4th 750, 758.) But even if the Court considers the arguments amici make about the Legislature's intent and the bill's purpose, the end-result is no different, for those sources do not show that

the Legislature meant for Assembly Bill 1747's requirements to apply to policies issued before its effective date.

1. *Assembly Bill 1747's legislative history does not suggest that its new requirements apply to policies issued and delivered before the effective date.*

To overcome the *Interinsurance Exchange* presumption, Plaintiffs and their amici would need to point to "'clear'" language in Assembly Bill 1747's legislative history reflecting an "'unavoidable implication'" that the Legislature intended the statute's new requirements to be retroactively incorporated into already-issued policies. (ABOM 49, quoting *Myers v. Philip Morris Co.* (2002) 28 Cal.4th 828, 844 (*Myers*).) They have not done so. As Protective detailed in its Answer Brief on the Merits, the legislative history is devoid of even the slightest indication that the Legislature wanted Assembly Bill 1747's new requirements to govern already-existing contracts. (See ABOM 49–51.) California Advocates for Nursing Home Reform all but concedes the point when it—now getting a second presumption wrong—emphasizes that "[n]owhere in the Legislative History for AB 1747 is there any indication, explicit or implied, that the new statutes would only be applied to newly issued policies." (CANHR Br. 19.) The pertinent question is whether the legislative history contains any statement of intent to apply the statute retroactively, not the other way around.

California Advocates for Nursing Home Reform fares no better when it emphasizes the verb tense in the comments, attributed to Assembly Bill 1747's author, that the bill would help

those "who faithfully paid their life insurance policies for years." (CANHR Br. 19, quoting 1 AA 629, 634, 693).) This reliance on a matter as obscure as verb tense underscores how little the legislative history helps Plaintiffs. Those comments make no reference to retroactivity and are the sorts of "'vague phrase[s]'" this Court has said does not "'satisfy'" the "clear-and-unavoidable-implication" test. (ABOM 49–50, quoting *Myers*, *supra*, 28 Cal.4th at p.843.) Plus, this Court has "repeatedly declined to discern legislative intent from comments by a bill's author," like the author's comment here, "because they reflect only the views of a single legislator instead of those of the Legislature as a whole." (*Myers*, 28 Cal.4th at p.843.) In relying on this comment, California Advocates for Nursing Home Reform "ignores this long-standing principle." (*California Bldg. Indus. Ass'n v. State Water Res. Control Bd.* (2018) 4 Cal. 5th 1032, 1043.)

The legislative-history arguments from Plaintiffs' amici ultimately focus less on the intent of the Legislature than on the asserted intent of the amici. In addition to Granger, both the California Retired County Employees Association and California Advocates for Nursing Home Reform claim to have helped the author draft the bill or to have sponsored it. (See Granger Br. 5 & 7; CRCEA Br. 5; CANHR Br. 6.) But their participation and support in the process does not mean that their personal and subjective views deserve consideration in the Court's efforts to discern the Legislature's intent. Statements of a bill's author are not strong evidence of statutory meaning, and, as this Court has suggested, a "third party's opinion regarding" the "legislative process" is of

even "less worth" for these purposes. (*Am. Fin. Servs. Ass'n v. City of Oakland* (2005) 34 Cal.4th 1239, 1262 fn.11.) The role of an amicus, to be sure, is to "facilitate informed judicial consideration of a wide variety of information and points of view that may bear on important legal questions." (*Connerly v. State Pers. Bd.* (2006) 37 Cal. 4th 1169, 1177.) But an amicus's statement of its own intent does not override the statutory text or the intent of the Legislature as a whole. None of the amici supporting Plaintiffs claims to have discussed the bill with anyone but the author or each other. Their intent—and their subjective understanding of the statute's meaning—is not pertinent to the analysis.

Along similar lines, it is irrelevant that amici claim not to have received "any complaint" from insurers "about the legislation going into effect as of January 1, 2013 and applying to all policies as of that date." (Granger Br. 11.) That silence proves Protective's point. Nobody in the insurance industry would have "complain[ed]" about Assembly Bill 1747 on that ground because neither the bill's text nor its legislative history indicated that the requirements would apply to policies issued before the statute's effective date.

2. *Assembly Bill 1747's purposes do not suggest that its requirements apply to policies issued and delivered before the effective date.*

Plaintiffs' amici raise various arguments about Assembly Bill 1747's purposes and contend they should drive the statute's interpretation. Those arguments have little weight in light of

what the text and legislative history say, but they are unpersuasive in any event.

a. *Assembly Bill 1747 benefits policyholders including, but not limited to, seniors.*

Start with amici's arguments about the statute's application to seniors. Assembly Bill 1747's provisions do not single out seniors or any other group of insureds. They simply require insurers to incorporate provisions in policies at the time they are "issued or delivered" in the State. (See Ins. Code, § 10113.71, subd. (a), as amended.) Amici contend that the specific purpose of Assembly Bill 1747's consumer safeguards was to protect "today's seniors," who "usually purchased their insurance policies before 2013." (CRCEA Br. 9; CANHR Br. 20; Granger Br. 10.) If that were one of the statute's purposes, then it was incumbent upon the Legislature to "expressly so declare[]" its intent for the safeguards to apply to policies purchased "before 2013." (*Interinsurance Exch.*, *supra*, 58 Cal.2d at p.149.) But it did not. As the Court of Appeal reasoned in this case, "[w]ords may not be inserted in a statute under the guise of interpretation." (Opn. 10, quoting *City of Sacramento v. Pub. Employees' Ret. Sys.* (1994) 22 Cal.App.4th 786, 793–94.)

The only reference to "seniors" in the legislative history is the author's comment that the bill "provides consumer safeguards from which people who have purchased life insurance coverage, especially seniors, would benefit." (ABOM 20, citing 1 AA 610–611.) That one comment suggests that the author believed the bill would "especially" help seniors. (*Ibid.*) But the author did

not distinguish between seniors with policies issued before January 1, 2013, and those with policies issued after that date. So this comment, which cannot be attributed to the entire Legislature in any event, falls far short of creating a "clear and unavoidable implication" that the statute applies to previously issued policies. (*Myers*, *supra*, 28 Cal.4th at p.843.) Even if the author proposed this bill in response to what he perceived to be a "problem" as Granger claims (Granger Br. 11), this Court has made clear that "retrospective operation of a statute cannot be implied from the mere fact that the statute is remedial." (ABOM 51–52, quoting *Aetna Cas. & Surety Co. v. Ind. Acc. Com.* (1947) 30 Cal.2d 388, 395 (*Aetna*).)

Moreover, amici's premise that Assembly Bill 1747's application to policies issued on or after the effective date "would not have been effective" because it does not benefit "today's seniors" is flawed. (Granger Br. 10, 12.) Older people buy fewer life-insurance policies than younger people, but seniors do buy them. The American Council of Life Insurers' amicus brief highlights a recent survey revealing that 19 percent of new permanent life insurance products are purchased by seniors. (See ACLI Br. 19, fn.6, citing Life Insurance Marketing and Research Association, *The Purchase Funnel: Who Buys What and Why* (2017).) An estimated 5.8 million people over the age of 65 lived in California as of 2019, so a substantial number of them would have bought new policies since 2013. *See* United States Census Bureau, https://www.census.gov/quickfacts/CA (last visited January 27, 2021). Furthermore, the non-seniors who have purchased policies

since 2013 will eventually become seniors, if they have not already. So, as the American Council of Life Insurers observes, Plaintiffs and amici's counter-argument "grows less compelling every day." (ACLI Br. 18.)

Indeed, with the passage of time, Assembly Bill 1747's protections will eventually apply to all policies, whether held by seniors or not. Some of the purposes of a statute regulating insurance contracts may not be fully realized right away, but that does not mean that the statute does not serve those purposes. It is simply the result of our legal system's presumption that people and businesses should not be forced to have a new statute's requirements retroactively written into contracts whose terms were negotiated long ago, and instead should "have an opportunity to know what the law is and to conform their conduct accordingly" in the contracts they enter into on a going-forward basis. (*Landgraf v. USI Film Prods.* (1994) 511 U.S. 244, 265.)

b. *Amici's insinuations about "lapse profits" are misguided.*

This Court can dispense with California Advocates for Nursing Home Reform's assertions, without supporting citations, that one of Assembly Bill 1747's purposes was to eliminate an alleged practice of insurers of collecting "financial windfalls," or "lapse profits," when policyholders accidentally let their policies lapse. (CANHR Br. 10–14.) Assembly Bill 1747's legislative history makes no reference to any such theory, and the insinuations are unfounded.

One key data point on this front is that the insurance industry *supported* the bill's consumer protections, including the extended grace period and additional notice obligations. (1 AA 664.) California Advocates for Nursing Home Reform claims that "industry lobby groups fought" these protections over "the costs for notifying current policy holder[s]," but that is not what the legislative history says. (CANHR Br. 12.) The legislative history shows that the American Council of Life Insurers initially opposed a draft version of the bill because a "provision requiring reinstatement for up to five months after a lapse in premium causes termination" could have forced "an insurer to reinstate" a policy without being able to "evaluate whether a new health issue has arisen that could affect the cost of coverage." (See 1 AA 664.) The legislative history reports that once "amendments address[ed]" the "complex reinstatement issues" of that sort, the American Council of Life Insurers "remove[d]" its "opposition." (1 AA 637.) It then stated, in a letter to the Assembly Insurance Committee, that "[w]e appreciate the goal of the author to protect against an unintended lapse of their life insurance coverage" and that "we share the same goal of helping policyholders keep their valuable life insurance coverage in place." (1 AA 664.) The "lapse profits" theory is false.

That theory also raises a more fundamental flaw in Plaintiffs' and their amici's approach: they assume that every senior would want to keep his or her life insurance policy until it expired. That is simply not true. Seniors (and non-seniors) often

voluntarily let their policies lapse, well before they are set to expire, for economically rational reasons. The premium amount on a term life insurance policy typically increases over time, so the policyholder may decide that the higher cost is no longer worth the protection. In fact, the annual premium on the policy owned by William McHugh in this case was scheduled to increase from $310 to $5,030 approximately two years after he did not pay his premium and his policy lapsed. (See 1 AA 109–110.)

Research shows that many policy holders intentionally let their policies lapse. A 2013 survey revealed that "55 percent of seniors have allowed their life insurance policies to lapse" because they "viewed it as a liability instead of an asset." *Most U.S. Seniors Let Life Insurance Lapse, Survey Finds,* BUSINESSWIRE.COM (Sept. 17, 2013) *available at* https://www.businesswire.com/news/home/20130917006245/en/Most-U.S.-Seniors-Let-Life-Insurance-Lapse-Survey-Finds (last visited January 27, 2021). People frequently buy life insurance for only a set period of time, recognizing that they will amass other assets as they get older and their children become adults, such that they no longer need the protection. The same 2013 survey reported that 24% of seniors let their policies lapse because "the reason they first bought life insurance ha[d] changed." (*Ibid.*)

The amici's insinuations that insurers seek "lapse profits" miscomprehends how the insurance market works and is belied by the facts of this case. Insurers benefit from their insured's continued payment of premiums. When insureds miss payments, insurers have strong incentives to take steps to help the insureds

keep their policies in place. That is what happened in this case. Even after William McHugh missed his annual premium due date in early 2013, and failed to pay within the 31-day grace period provided by his policy, Protective did not administratively terminate the policy at that time. It instead sent him a letter offering to keep his policy in place, without requiring him to re-submit to a medical examination, if he would send in his payment during a 31-day "prompt reinstate" period that followed the initial 31-day grace period. (See ABOM 24-25.) The law did not require that step, but Protective took it, as it did with all similarly situated insureds, to try to keep the policy in force. From Protective's perspective, amici's theory that insurers are playing a game of "gotcha" with insureds who miss their premium payments is fiction. That theory is no reason to deviate from the conclusions to which the statute's text and legislative history point.

c. *Amici are wrong to suggest that Assembly Bill 1747's purposes included "standardizing insurance contracts."*

Finally, the Court can make swift work of Granger's suggestion that interpreting Assembly Bill 1747 according to its plain terms would undermine the Legislature's purported "goal" of "standardizing insurance contracts in the marketplace." (Granger Br. 14.) The text and legislative history offer no evidence that the Legislature had any such desire. That is unsurprising. The reason different insurance policies have "different requirements and protections" is because different people agree to different things. (Granger Br. 14.) The statute itself recognizes

that different classes of life-insurance policies, "individual" and "group," exist, and provides for different treatment of those classes of insurance. (Ins. Code, § 10113.71, subd. (c).) The second Code section that codified Assembly Bill 1747 applies only to "individual" policies. (Ins. Code, § 10113.72, subds. (a) & (c).)

Protective explained in its Answer Brief on the Merits that any differential treatment between policies issued before 2013 and those issued after 2013 is not the "critical conflict" Plaintiffs, and now their amici, make it out to be. (ABOM 54, quoting OBOM 17, italics omitted.) As the American Council of Life Insurers observes, "[e]nforcement of contracts according to their specific terms is hardly an absurd result." (ACLI Br. 13, fn.3.) All Granger is describing is the impact that any new statute has on contractual relationships. "Every change in the law," this Court has explained, "brings about some difference in treatment as a result of the prospective operation of the amendment." (*Aetna*, *supra*, 30 Cal.2d at p.395.)

The difference in treatment here is sensible, and not just because the text or legislative history offer no evidence that the Legislature wanted all policies to be identical. Incorporating the statutory requirements into pre-2013 policies would have unfairly imposed additional financial obligations on insurers that they could not have recouped by retroactively increasing premiums under those policies. The U.S. Chamber of Commerce explains that insurers "base the premiums they charge policyholders on the legal requirements that apply at the time of contracting." (Chamber Br. 17.) Incorporating the new requirements into

pre-existing policies "could force insurers to impose higher premiums at the outset." (Chamber Br. 19.) The position of Plaintiffs' amici would bring "uncertainty in commercial transactions," and they give no reason to conclude that the Legislature would have wanted that result. (*Swenson v. File* (1970) 3 Cal.3d 389, 394–395.)

D. The interpretations from the Department of Insurance were correct and worthy of respect.

Finally, Plaintiffs' amici do not persuasively explain why the Court cannot consider and give weight to the opinions, expressed by Department of Insurance officials, that Assembly Bill 1747 by its terms "applies to policies issued or delivered on or after January 1, 2013, not before." (RA 113.) Those officials expressed their views repeatedly and consistently, both in the "SERFF Instructions for Complying with AB1747" published in the fall of 2012, and in correspondence between Department officials and insurers and insureds. (See ABOM 54–61.)

As for the weight to afford the Department's interpretation in the SERFF Instructions, Plaintiffs' amici offer no response at all. (See ABOM 56–58.) The SERFF Instructions, which the Department issued as guidance to insurers shortly after Assembly Bill 1747 passed, stated that "[a]ll life insurance policies issued or delivered in California on or after 1/1/2013 must contain a grace period of at least 60 days." (RA 110, italics omitted.) The Department has represented that the SERFF Instructions contained the agency's "positions and guidance related to the statutes." (ABOM 22, citing RJN 21, citing Ex.2.)

As for the communications between Department officials and insurers, amici's arguments are not persuasive. Around the same time the Department published the SERFF Instructions, agency officials communicated separately to insurers that "[t]he bill applies to policies issued or delivered on or after January 1, 2013, not before." (RA 113.) The California Retired County Employees Association says it "understand[s]" that these officials' interpretations "have been disclaimed by the DOI," but neither the Department nor any official who works there has ever contended that these interpretations were incorrect. (CRCEA Br. 10.)

The California Retired County Employees Association is also wrong to criticize these Department officials for never having "reached out to [it]" before sharing their understanding of the statute with insurers. (CRCEA Br. 9, 10.) Those officials offered their interpretations in the context of informal correspondence, not notice-and-comment rulemaking. (ABOM 58–59.) They based their conclusions on Assembly Bill 1747's text and this Court's precedents on non-retroactivity, rather than on any straw poll about various groups' policy preferences. Even if these officials' interpretations are "not controlling upon the courts," this correspondence reflected their "informed judgment to which courts and litigants may properly resort for guidance." (*Yamaha Corp. v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 14.)

Granger for his part does not claim that the Court cannot give these interpretations the respect they are due. He instead discusses his own interactions with "DOI's investigators," in which he claims he "discussed" the accidental-lapse issue and

how it "was a problem that we wanted to fix." (Granger Br. 11.) But he does not say that the investigators analyzed the statutory language and told him that they believed it would apply to policies issued before the effective date. Neither Granger, the California Retired County Employees Association, California Advocates for Nursing Home Reform, nor Plaintiffs themselves claim that anyone from the Department has ever agreed with their interpretation of the statute.

Even if the Court were to conclude that the Department officials' interpretations were entitled to no weight, the Court still would have no basis to interpret the statute in the way Plaintiffs and their amici urge. But these interpretations deserve weight because they are sound. They confirm the conclusion to which the statute's text, the *Interinsurance Exchange* presumption, and the relevant indicators of legislative intent and statutory purpose all point. That conclusion is that Assembly Bill 1747's new requirements apply to insurance policies issued on or after its effective date, not before.

III.

CONCLUSION

This Court should affirm the Court of Appeal's judgment.

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE

Pursuant to California Rule of Court Rule 8.204, subdivision (c), the undersigned counsel for Protective Life Insurance Company certifies that, as calculated by the Microsoft Word 2016 software program, this brief contains a total of 4,543 words, including footnotes.

DATED: January 29, 2021

Respectfully submitted,

s/ John C. Neiman, Jr.
John C. Neiman, Jr. (admitted *pro hac vice*)

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DATED: January 29, 2021 *s/ John C. Neiman, Jr.*
John C. Neiman, Jr.

STATE OF CALIFORNIA
Supreme Court of California

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STATE OF CALIFORNIA
Supreme Court of California

Case Name: **McHUGH v. PROTECTIVE LIFE INSURANCE**
Case Number: **S259215**
Lower Court Case Number: **D072863**

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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

1/29/2021

Date

/s/John Neiman

Signature

Neiman, John (pro hac)

Last Name, First Name (PNum)

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