

S. Ct. Case No. S259215

IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA

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BLAKELY McHUGH, et al.,

*Plaintiff-Appellee/Cross-Appellant,*

v.

PROTECTIVE LIFE INSURANCE COMPANY,

*Defendant-Appellant/Cross-Appellee.*

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After Decision by the Court of Appeal  
Fourth Appellate District, Div. One (D072863)  
(Superior Court of San Diego County, Hon. Judith F. Hayes  
37-2014-00019212-CU-IC-CTL)

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**APPLICATION FOR LEAVE TO FILE,  
AND SUBMISSION OF, BRIEF BY *AMICI CURIAE* CALIFORNIA  
RETIRED COUNTY EMPLOYEES ASSOCIATION IN SUPPORT OF IN  
SUPPORT OF APPELLANT BLAKELY MCHUGH, ET AL.**

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**CERTIFICATE OF INTERESTED PARTIES**

Pursuant to California Rule of Court, rule 8.208, California Retired County Employees Association certifies that it is a non-profit organization which has no shareholders. As such, *amicus* and its counsel certify that *amicus* and its counsel know of no other person or entity that has a financial or other interest in the outcome of the proceeding that the *amicus* and its counsel reasonably believe the Justices of this Court should consider in determining whether to disqualify themselves under canon 3E of the Code of Judicial Ethics.

Dated: November 25, 2020

Respectfully Submitted,

By:   
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**APPLICATION FOR LEAVE TO FILE *AMICUS BRIEF***

Under California Rules of Court, rule 8.200(c), California Retired County Employees Association (“CRCEA”) requests permission to file the attached brief as *amicus curiae* in support of the position of Petitioner Blakely McHugh, et al.

**I. STATEMENT OF INTEREST OF THE  
*AMICUS CURIAE***

The California Retired County Employees Association (“CRCEA”) was one of the original sponsors of AB1747, which eventually became the statutes at issue in this appeal (the “Statutes”).

The CRCEA is a coalition of all the associations of retired county employees from the 20 counties with retirement systems formed under the County Employees Retirement Law of 1937. CRCEA is a non-profit social welfare organization and the central coordinating group through which the desires and objectives of its various Member Associations – such as the Retired Employees of Alameda County and the Retired Employees Association of Los Angeles County – are advanced. CRCEA’s Member Associations are, each, generally the largest group of retired county employees in each of their respective counties. In turn, CRCEA is their coordinating group looking to

advance their interests and to promote the health, well-being, and continued productivity of retired members of such associations as well as active public employees in these counties.

To help fulfill its purpose, among other things, CRCEA monitors state and federal legislative measures, and court cases, that may affect its Member Associations and our public service retirees. CRCEA has filed *amicus* letters or briefs with the courts, in the past, on behalf of its retirees.

CRCEA respectfully submits this short brief on behalf of the over 180,000 California county retirees it represents. Many, if not all, of its retirees have, have purchased, or have been offered life insurance policies in connection with their employment with their counties, or otherwise. It is with these retirees in mind that CRCEA formally sponsored AB 1747 when it was before the California legislature. The proper interpretation of the Statutes obviously affects CRCEA members' life insurance policies.

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Dated: November 25, 2020

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**AMICUS BRIEF OF CALIFORNIA RETIRED COUNTY  
EMPLOYEES ASSOCIATION**

**I. THE STATUTES SHOULD APPLY TO POLICIES  
EXISTING ON OR AFTER JANUARY 1, 2013; WHICH  
IS WHAT THE LEGISLATURE INTENDED WHEN IT  
DRAFTED THOSE STATUTES; AND WHAT CRCEA  
UNDERSTOOD WHEN IT FORMALLY SUPPORTED  
THOSE STATUTES**

CRCEA supported AB 1747 (sometimes referred to as “The Bill”) because it was designed to provide needed and very important safeguards against unintended or uninformed loss of valuable life insurance, including sufficient warning that premiums may lapse due to nonpayment. These consumer safeguards were specifically designed to protect seniors, as the authors of the Bill itself confirmed. CRCE formally supported The Bill precisely because of its pro-senior and retiree-friendly goals. And CRCEA was not the only organization that supported The Bill for these reasons. The California Alliance of Retired Americans, the California Advocates for Nursing Home Reform, and the Congress of California Seniors all joined CRCEA in expressly supporting AB 1747.

However, the insurance company and the Court of Appeal below ignore the very purpose of the Statutes and undercut the whole reason CRCEA and its colleagues supported AB 1747. In short, limiting The



Statutes' important protections to only newer policies leaves out the very seniors The Bill was meant to protect. I.e., the Court of Appeal's position is inconsistent with the goal of helping seniors because today's seniors (and, of course, 2012's and 2013's seniors) usually purchased their insurance policies well before 2013. CRCEA's retiree members, generally, purchased or obtained life insurance long ago, and long before they became seniors. In short, seniors and retirees, including CRCEA's retirees, are not the usual folks buying life insurance policies. The Court of Appeal, therefore, converted statutes that were designed to help everyone at that time— including our members and other seniors most likely to need the Statutes' protections - into statutes that only benefit young people – i.e., the ones least likely to need the protections. Had CRCEA known that this would be the result, it would not have supported The Bill.

Moreover, the Court of Appeal, as we understand it, relied on emails involving Department of Insurance staff attorneys, and held that these emails were tantamount to an official opinion or interpretation by the DOI. Notably, and even though CRCEA formally participated in the passage of AB 1747 itself, none of those staffers (or anyone at the

DOI for that matter) reached out to CRCEA before formulating those unofficial opinions or sharing those unofficial opinions with insurers.

But any official interpretation of such important Statutes by the DOI would have and should have had a more robust and formal procedure, including possibly consulting with groups like CRCEA and our colleagues who supported The Bill. After all, as the DOI's website confirms, the DOI maintains a special focus on protecting seniors, including by maintaining a "Seniors Information Center" and maintaining alerts for what it calls "senior or insurance-related" Bills.

See <http://www.insurance.ca.gov/0150-seniors/>

(last accessed Nov. 30, 2020). Yet, CRCEA was never contacted by the DOI staffers. The unofficial opinions by the DOI staffers at the time – which we now understand have been disclaimed by the DOI – should not be interpreted as official DOI interpretations. The insurance company and the Court of Appeal's interpretation of the Statutes, i.e. that they should be interpreted to never apply to policies issued before 2013, should be rejected.

## II. CONCLUSION

For the forgoing reasons, CRCEA respectfully requests that this Court reverse the decision of the Court of Appeal.

Dated: November 25, 2020

Respectfully Submitted,

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**CERTIFICATE OF LENGTH OF BRIEF**

I, Noam Glick, declare under penalty of perjury under the laws of the State of California that the word count for this Brief, excluding Tables of Contents, Tables of Authority, Proof of Service, and this Certification is less than 989 words as calculated utilizing the word count feature of the Microsoft Word software used to create this document.

Dated: November 25, 2020

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**PROOF OF SERVICE**

I, Noam Glick, declare as follows:

I am a resident of the State of California, residing or employed in San Diego, California. I am over the age of 18 years and am not a party to the above entitled action. My business address is 225 Broadway, 19<sup>th</sup> Floor, San Diego, California 92101, and my electronic service address is noam@glicklawgroup.com.

On November 25, 2020, a true copy of the **Application For Leave To File, And Submission Of, Brief By *Amici Curiae* California Retired County Employees Association In Support Of In Support Of Appellant Blakely McHugh, et al.** was served on the participants in the case who are registered for the Electronic Filing System (“EFS”) TrueFiling Portal.


I further certify that some of the participants in the case are not registered for the EFS TrueFiling Portal. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-EFS participants:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 25, 2020, at San Diego, California.

By:   
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**STATE OF CALIFORNIA**  
Supreme Court of California

**PROOF OF SERVICE**

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

11/30/2020

Date

/s/Noam Glick

Signature

Glick, Noam (251582)

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