IN THE SUPREME COURT OF FLORIDA

LYANTIE TOWNSEND, as Personal Representative of the Estate of FRANK TOWNSEND, Petitioner, v. R.J. REYNOLDS TOBACCO COMPANY, Respondent.	Case No. SC15-722 L.T. Nos. 1D13-4147 and 2008-CA-003978

ON REVIEW FROM THE DISTRICT COURT OF APPEAL,
FIRST DISTRICT, STATE OF FLORIDA

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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SUMMARY OF ARGUMENT

The First District's opinion falls squarely in line with established Florida law holding that legislative changes to the post-judgment interest rate apply to interest that accrues after the effective date of the amendments, even on judgments entered before the effective date. Because the Legislature did not include language in the 2011 amendments restricting their application to judgments entered after the effective date—and, indeed, the statute on its face applies to judgments "obtained on or after January 1, 1995," § 55.03(1), Fla. Stat. (2011)—the changes apply to any interest accruing on Ms. Townsend's judgment after July 1, 2011.

Ms. Townsend asks this Court to detour from this unbroken line of authority and hold that the Legislature in 1998 created, for the first time, a perpetual right to post-judgment interest at a particular rate. The Court should decline that invitation and approve the First District's opinion for at least four reasons.

First, this Court presumes that a statute is not intended to alter the common law unless the statute unequivocally provides otherwise. Despite Ms. Townsend's protests, Florida has long followed the majority common law view—dating back more than a century—holding that post-judgment interest is a matter of legislative grace and that changes to the post-judgment interest rate apply prospectively to existing judgments. Here, neither the 1998 nor 2011 amendments mention the common law, much less unequivocally declare a legislative intent to abandon the

common law rule and create a vested right to post-judgment interest. To the contrary, the 2011 Legislature retained the provision in the prior version of the statute stating that the interest-rate scheme provided by the statute applied to all judgments "obtained on or after January 1, 1995." Had the Legislature intended to apply the changes only to judgments entered after July 1, 2011, the Legislature necessarily would have deleted this provision.

Second, there is a strong presumption against reading statutes as creating vested rights. For that reason, this Court has long held that no one has a vested right in the expectation that the Legislature will not change the law. Again, nothing in the 1998 amendments demonstrates that the Legislature intended to create a vested right to *future* accruals of post-judgment interest at a particular rate.

Third, one Legislature cannot tie the hands of future Legislatures and prevent them from amending laws when legislative priorities change. Yet, if Ms. Townsend is correct, the Legislature in 1998 prevented future Legislatures from prospectively changing the interest rate on interest that had not yet accrued.

Fourth, the Legislature is presumed to know how courts have construed a statute in the past whenever it amends the statute. Thus, the Legislature was presumed to know in 2011 that its amendments to section 55.03 would apply to existing judgments unless it stated otherwise. Had the Legislature intended to apply the 2011 amendments only to judgments entered after the effective date of

the changes, it would have included specific language to that effect, precisely as it did when it amended the same act in 1980 and again in 1994.

Finally, Reynolds does not seek retroactive application of the 2011 amendments because it does not seek to apply them to interest that had already accrued as of July 1, 2011. Instead, Reynolds asks only that the amendments be applied *prospectively* to interest accruing *after* the effective date of the act. Courts across the country have uniformly rejected the exact same retroactivity argument Ms. Townsend advances here in construing amendments to judgment interest statutes. This Court should do the same and approve the First District's decision.

ARGUMENT

Ms. Townsend asks the Court to find that a single sentence from the 1998 version of section 55.03 abrogated more than a century of common law, thereby placing Florida decidedly in the minority of states that view post-judgment interest as a vested right. According to Ms. Townsend, this sentence provided her with a vested right to post-judgment interest at 6 percent for life and precluded future Legislatures from changing the rate—even on interest that has not yet accrued. Yet, the First District's decision correctly recognized that Florida, like the majority of states, views post-judgment interest as a matter of legislative grace subject to prospective change (or abolition) at any time—a fact conceded by Ms. Townsend

in her brief. *Petitioner's Initial Brief at 8*. Thus, the Court should answer the certified question in the negative and approve the First District's decision.

I. Under Florida's long-established common law, legislative changes to post-judgment interest rates apply prospectively to existing judgments

Ms. Townsend faults the First District for relying on the "common law default rule," going so far as to argue that no such rule exists. *Petitioner's Initial Brief at 23-24*. But, as the First District recognized in its opinion, Florida has long followed the view that changes to statutory judgment interest rates apply to existing judgments unless the legislation amending the rates specifically says otherwise. *See, e.g., Applestein v. Simons*, 586 So. 2d 441 (Fla. 3d DCA 1981). Courts in Florida and throughout the country have applied this view to the precise question presented here for more than a century. A review of these cases demonstrates the fallacy in Ms. Townsend's argument.

A. Florida's common law view of post-judgment interest rates stretches back more than a century

The common law interpretation of post-judgment interest statutes can be traced back to the United States Supreme Court's decision in *Morley v. Lake Shore & M.S. Railway Co.*, 146 U.S. 162 (1892). In *Morley*, the Supreme Court held that post-judgment interest is a matter of "legislative discretion," rather than a contract between the parties. *Morley*, 146 U.S. at 168. The Court explained:

> Should the statutory damages for nonpayment of a judgment be determined by a state, either in whole or in

> part, the owner of a judgment will be entitled to receive and have *a vested right in the damages which shall have accrued up to the date of the legislative change*; but after that time his rights as to interest as damages are, as when he first obtained his judgment, just what the legislature chooses to declare.

Id. (emphasis added).

The United States Court of Appeals for the Fifth Circuit applied *Morley* to Florida law in *Glades County v. Kurtz*, 101 F.2d 759, 760 (5th Cir. 1939). In *Glades County*, the Fifth Circuit held that a 1933 amendment to Florida's judgment interest statute—which reduced the rate from 8% to 6%—applied to a judgment entered in 1932. *Id.* at 759. The court noted that, unless the parties expressly agree otherwise in a contract, the determination of the rate of interest on a judgment "rest[s] entirely with the Legislature." *Id.* at 760.

In its ruling, the Fifth Circuit relied on two principles of law. First, the court rejected the view that "the judgment and the statute constitute a contract for the rate of interest specified in the statute" and held that post-judgment interest was entirely a legislative creation. *Id.* at 759-60. Second, the court held that the Legislature had an absolute right to change the rate of interest at any time and for any reason, and that those changes can be applied to existing judgments:

> [T]he provision of the judgment, whether expressed or implied, providing for payment of interest is an expression of the sovereign will, supplying whatever may be lacking in mutual consent. When because of changing conditions, the will relaxes and substitutes a new and

> different provision, it modifies or impairs no contract that the parties have made.

Id.

The first Florida state court to address a similar question was the Third District Court of Appeal in *Applestein*, which addressed whether 1980 and 1981 statutory changes to the post-judgment interest rate applied to a 1979 judgment. The Third District cited *Glades County* with approval and noted that "[g]enerally the interest rate would change on an unsatisfied final judgment as the statute proscribing the rate of interest is amended, unless otherwise provided in the basic agreement upon which the final judgment was rendered." *Applestein*, 586 So. 2d at 442. The district court noted, however, that both amendments expressly stated that they applied only to judgments entered after their effective dates. *Id*. Thus, the court concluded that the legislation, by its terms, overrode the default rule.

The Fifth District Court of Appeal next reached a similar result in a case addressing whether a 1994 amendment to section 55.03 applied to judgments entered before the effective date of the amendment. *See Beverly Enters.-Fla., Inc. v. Spilman*, 689 So. 2d 1230 (Fla. 5th DCA 1997). Following *Applestein*, the Fifth District noted that the plain language of the amendment indicated that it would apply only to judgments entered on or after January 1, 1995, thereby demonstrating that the Legislature did not intend for the amendment to apply to existing judgments. *Id*. at 1231. The court had no reason to address the default rule in

Florida because the legislation, on its face, provided that it would not apply to a 1994 judgment. Later that year, however, the same court expressly agreed with the rule reflected in *Applestein*. *See Keanie v. Goldy*, 698 So. 2d 1264, 1266 (Fla. 5th DCA 1997) (quoting *Applestein* with approval).

These cases demonstrate four bedrock principles of Florida common law. First, there is no inherent right to post-judgment interest. *See Whitehurst v. Camp*, 677 So. 2d 1361, 1362 (Fla. 1st DCA 1996) ("[p]ost-judgment interest did not exist at common law and is solely a matter of legislative creation"). Second, no party has a vested right to any specific rate or method of calculating post-judgment interest. *See Glades Cnty*., 101 F.2d at 760. Third, the Legislature can prospectively change the interest rate on existing judgments at any time as it sees fit or—as Ms. Townsend concedes—abolish post-judgment interest altogether. *See id.*; *Petitioner's Initial Brief at 8*. Fourth, and most important, the default rule in Florida is that post-judgment interest rates change prospectively on unsatisfied judgments whenever the Legislature changes the rates. *See Applestein*, 586 So. 2d at 442.

B. Florida aligns with the majority view in holding that statutes amending interest rates apply to existing judgments

Not surprisingly, courts across the country have grappled with the same issue presented here for more than a century. A minority of states view post-judgment interest as a *contractual* obligation not subject to legislative change. *See*

McBride v. Superior Court, 635 P.2d 178, 179 (Ariz. 1981). But in those states—like Florida—that view post-judgment interest as a *statutory* creation subject to changes in legislative priorities, "a change in the statutory rate of interest will result in a change in the rate of interest upon the judgment." *Id*.

Thus, Florida firmly aligns with the majority of states that apply statutory changes to existing judgments. *See* Diane M. Allen, Annotation, *Retrospective Application and Effect of State Statute or Rule Allowing Interest or Changing Rate of Interest on Judgments or Verdicts*, 41 A.L.R. 4th 694, 698 (1985) (observing that "the majority of cases support the view that interest is a statutory obligation and thus that interest rates on judgments reflect statutory changes during the pendency of the obligation"); Brian P. Miller, Comment, *Statutory Post-Judgment Interest: The Effect of Legislative Changes after Judgment and Suggestions for Construction*, 1994 B.Y.U. L. Rev. 601, 607-08 (1994) (noting that this represents the view of "[t]he majority of the states addressing this issue").

Most courts across the country continue to follow the rationale established by *Morley*. For example, the Maryland Court of Appeals agreed that a legislative change to Maryland's judgment interest rate applied to existing judgments even though the legislation was silent on the issue. The court reasoned:

> [Interest on a judgment] is a matter of legislative grace, the purpose of which is to compensate the judgment creditor for the damages sustained by non-payment of the judgment. Just as the judgment creditor has no right to

> interest except that which the legislature decrees, the judgment debtor has no right to a limitation of the interest rate to be applied in the future, except that which is decreed by the legislature. Should the legislature deem it wise to change the interest rate from time to time in order to fairly compensate judgment creditors for the damages they sustain because of the non-payment of judgments, the new rate will apply from the effective date of the change to all outstanding judgments.

Mayor & City Council of Baltimore v. Kelso Corp., 449 A.2d 406, 410 (Md. 1982). Similarly, in *Noe v. City of Chicago*, 307 N.E.2d 376, 349 (Ill. 1974), the Illinois Supreme Court followed *Morley* and rejected the contrary view as "forced and unrealistic." And in *McBride*, the Arizona Supreme Court agreed that "interest upon a judgment is a statutory and not a contractual obligation, and when the interest rate was changed by statute, the rate of interest on the judgment was also changed." *McBride*, 635 P.2d at 179.[1]

[1] *Accord Shook & Fletcher Insulation Co. v. Cent. Rigging & Contracting Corp.*, 684 F.2d 1383, 1388-89 (11th Cir. 1982) (applying Georgia law); *Read v. Mississippi Cnty*., 63 S.W. 807 (Ark. 1901); *Idaho Gold Dredging Corp. v. Boise Payette Lumber Co.*, 37 P.2d 407, 412 (Idaho 1934); *Ind. Dep't of Revenue v. Glendale-Glenbrook Assocs*., 429 N.E.2d 217, 220 (Ind. 1981); *Ridge v. Ridge*, 572 S.W. 2d 859, 860-61 (Ky. 1978); *Senn v. Commerce-Manchester Bank*, 603 S.W. 2d 551, 553-54 (Mo. 1980); *Stanford v. Coram*, 72 P. 655, 655-56 (Mont. 1903); *Swanson v. Flynn*, 31 N.W.2d 320, 323 (N.D. 1948); *Se. Freight Lines v. Michelin Tire Corp.*, 303 S.E.2d 860, 861-62 (S.C. 1983); *Associated Developers, Inc. v. City of Brookings*, 305 N.W. 2d 848, 849 (S.D. 1981); *Brown v. David K. Richards & Co.*, 978 P.2d 470, 478 (Utah Ct. App. 1999); *Wyo. Nat'l Bank of Laramie v. Brown*, 53 P. 291 (Wyo. 1898).

II. The First District correctly concluded that the 1998 changes to section 55.03 did not create a vested right to post-judgment interest at a set rate

The crux of Ms. Townsend's argument is that the Legislature, by adding language to section 55.03 that "the interest rate established at the time a judgment is obtained shall remain the same until the judgment is paid" provided her "the right to a fixed rate of post-judgment interest that could not be taken away until the judgment was fully satisfied." *Petitioner's Initial Brief at 8-9*. Ms. Townsend's statutory interpretation argument is fundamentally flawed, and she overlooks at least four basic principles of Florida law that form the foundation of the First District's decision.

A. Ms. Townsend misreads the amendments to section 55.03

1. The 1998 amendments did not create a right to a fixed rate of interest immune from legislative changes

Ms. Townsend bases her argument on what she describes as the "plain, unambiguous text" of the 1998 amendments to section 55.03. *Petitioner's Initial Brief at 9.* According to Ms. Townsend, because the statute says that the interest rate remains fixed "until the judgment is paid," the Legislature's intent "is apparent from the plain language used." *Petitioner's Initial Brief at 10*. Not so.

The problem with Ms. Townsend's argument is that the Legislature included substantively identical language establishing a rate effective "until payment" in every iteration of section 55.03 from 1979 until adopting the language "until the

judgment is paid" in 1998. *See* Ch. 79-396, § 8, at 1955, Laws of Fla. (1979); Ch. 98-410, § 4, at 3283, Laws of Fla. (1998). Yet, the Legislature still thought it was necessary in 1980 and 1994 to specify that it intended statutory amendments to apply only to judgments entered after the effective date. *See* Ch. 80-110, § 1, at 410, Laws of Fla. (1980); Ch. 94-239, § 8, at 1790, Laws of Fla. (1994); *Beverly Enters-Fla.*, 689 So. 2d at 1231; *Applestein*, 586 So. 2d at 442. If statutory language setting a rate "until payment" irrevocably locked in the interest rate on judgments, as Ms. Townsend's argument suggests, there would have been no need for the Legislature to specify after 1979 that amendments applied only to new judgments. *See State v. Goode*, 830 So. 2d 817, 824 (Fla. 2002) ("a basic rule of statutory construction provides that the Legislature does not intend to enact useless provisions, and courts should avoid readings that would render part of a statute meaningless").

Further, while Ms. Townsend argues that the Legislature "abandoned or altered" the "common law default rule" by adding "until the judgment is paid" to the 1998 amendments, the district courts in *Applestein* and *Keanie* reiterated the applicability of the "default rule" in Florida *after* the 1979 amendments added the virtually identical "until payment" language. *See Applestein*, 586 So. 2d at 442; *Keanie*, 698 So. 2d at 1266.

That the Legislature used the word "shall" in subsection (3) is irrelevant to the analysis. Interest rate statutes virtually always use mandatory language for a self-evident reason: once the Legislature has made a policy decision to permit post-judgment interest, the method for calculating it must be applied uniformly across the jurisdiction. It would be odd if every sheriff or trial judge had the option of applying a different interest rate to judgments. Yet, even when legislatures have used the word "shall" in interest rate statutes, courts have consistently upheld the right of future legislatures to change the rate on unsatisfied judgments. *See*, *e.g.*, *Morley*, 146 U.S. at 165-69 (1892) (prior statute stated that the interest rate "*shall* continue to be seven dollars upon one hundred dollars"); *McBride*, 635 P.2d at 178-79 (prior statute stated that "[i]nterest … *shall* be at the rate of six per cent per annum"). Thus, the word "shall" simply shows that the 1998 legislation was mandatory *unless and until* the Legislature amended it. Indeed, most laws are mandatory once enacted, yet still subject to prospective amendment by future legislatures.

2. The 2011 amendments do not include language restricting their application to future judgments

As the Third District noted in *Applestein*, when deciding whether to apply changes to the interest-rate statute to existing judgments, the focus should be on the language in the new version of the statute, not the former version, because the "rate would change on an unsatisfied final judgment as the statute proscribing the

rate of interest is amended" unless—as in that case—the new statute stated differently. *Applestein*, 586 So. 2d at 441. The language in the 2011 amendments, however, provides Ms. Townsend no help.

Ms. Townsend's textual argument emphasizes language in the 2011 amendments stating that "[t]he interest rate *is* established at the time a judgment is obtained." *Petitioner's Initial Brief at 12* (emphasis in original). According to Ms. Townsend, "[b]y using the present tense 'is' rather than the past tense 'was,' the legislature indicated a desire to apply the amendment only to judgments entered after the amendment's effective date." *Id. at 13*.

The problems with this argument are self-evident. First, if Ms. Townsend were right, the Legislature would have used the word "was" rather than "is" to make the amendments apply to existing judgments. But doing so would result in decidedly awkward statutory language that, read literally, would apply the changes *only* to existing judgments: "the interest rate *was* established at the time a judgment *was* obtained." Second, it overlooks the remainder of the sentence, which states that "such interest rate *shall* be adjusted annually ... until the judgment is paid." Ch. 2011-169, § 1, at 1, Laws of Fla. (2011) (emphasis added). As Ms. Townsend herself acknowledges, "shall" is mandatory. This language thus makes clear that, no matter when the initial interest rate on a judgment "is" established, the rate "shall" adjust going forward.

Finally, the Legislature left intact the language from the prior versions of the statute stating that "[j]udgments obtained on or after January 1, 1995, shall use the previous statutory rate for time periods before January 1, 1995, for which interest is due and shall apply the rate set by the Chief Financial Officer for time periods after January 1, 1995, for which interest is due." *Id*. Had the Legislature intended for the amendments to apply only to judgments entered after July 1, 2011, it necessarily would have eliminated that provision.

B. Ms. Townsend's argument also overlooks at least four established principles of law

1. The 1998 amendments do not contain unequivocal language abrogating the common law by creating a right to interest

The overriding problem with Ms. Townsend's argument is that it rests on the assumption that the Legislature—by adding a single sentence containing the words "shall remain the same until the judgment is paid" to section 55.03 in 1998—implicitly altered more than a century of common law holding that no party has a right to post-judgment interest at any particular rate and that changes to post-judgment interest rates apply to future accruals of interest on existing judgments. Not so. As the First District recognized, "this language does not show that the Legislature intended to abandon the common law default rule." *R. J. Reynolds Tobacco Co. v. Townsend*, 160 So. 3d 570, 574 (Fla. 1st DCA 2015).

Under long-standing Florida law, "[t]he presumption is that no change in the common law is intended unless the statute is explicit and clear in that regard." *Thornber v. City of Ft. Walton Beach*, 568 So. 2d 914, 918 (Fla. 1990); *accord Major League Baseball v. Morsani*, 790 So. 2d 1071, 1077-78 (Fla. 2001). As this Court has explained, "[u]nless a statute unequivocally states that it changes the common law, or is so repugnant to the common law that the two cannot coexist, the statute will not be held to have changed the common law." *Thornber*, 568 So. 2d at 918. Further, "even where the Legislature acts in a particular area, the common law remains in effect in that area unless the statute specifically says otherwise." *Major League Baseball*, 790 So. 2d at 1078. Accordingly, Ms. Townsend errs in contending that, because post-judgment interest is governed by statute, judge-made law is entirely irrelevant in establishing the governing interpretive presumptions.

Whatever else might be said about the 1998 amendments, they do not "unequivocally state" that they were enacted to alter the common law, much less to provide judgment holders a "vested right" in the future accrual of interest at a fixed rate. Instead, neither the 1998 amendments nor the 2011 changes mention the common law.

Similarly, the 1998 amendments are not "so repugnant to the common law that the two cannot coexist." *Thornber*, 568 So. 2d at 918. Instead, rather than

creating an unassailable right to a particular rate of interest, the 1998 amendments simply provided that the rate would remain the same unless and until—as here—the Legislature decided otherwise. Thus, subsection (3), properly read, is entirely consistent with the long-standing common law rule that post-judgment interest is "just what the legislature chooses to declare." *Morley,* 146 U.S. at 168.

2. The sentence relied upon by Ms. Townsend does not create a vested right to interest that has not yet accrued

Second, nothing in the language of the 1998 amendments can be read as creating a "vested right" to post-judgment interest at a particular rate.

In construing a statute, "the presumption is that 'a law is not intended to create private contractual or vested rights but merely declares a policy to be pursued until the legislature shall ordain otherwise.'" *Nat'l R.R. Passenger Corp. v. Atchison Topeka & Santa Fe Ry. Co.*, 470 U.S. 451, 466 (1985) (quoting *Dodge v. Bd. of Educ.*, 302 U.S. 74, 79 (1937)). As the United States Supreme Court explained, "[t]his well-established presumption is grounded in the elementary proposition that the principal function of a legislature is not to make contracts, but to make laws that establish the policy of the state," and "[p]olicies, unlike contracts, are inherently subject to revision and repeal." *Nat'l R.R. Passenger Corp.*, 470 U.S. at 466. Thus, "to construe laws as contracts when the obligation is not clearly and unequivocally expressed would be to limit drastically the essential powers of a legislative body." *Id.*

For that reason, this Court has observed that no one has a vested right in the expectation that the Legislature will not change the law. Instead, "[t]o be vested, a right must be more than a mere expectation based on an anticipation of the continuance of an existing law; it must have become title, legal or equitable, to the present or future enforcement of a demand." *Fla. Hosp. Waterman, Inc. v. Buster*, 984 So. 2d 478, 490 (Fla. 2008); *see also City of Sanford v. McClelland*, 163 So. 513, 514-15 (Fla. 1935) ("A vested right has been defined as 'an immediate, fixed right of present or future enjoyment' and also as 'an immediate right of present enjoyment, or a present, fixed right of future enjoyment'" (quoting *Pearsall v. Great N. Ry.*, 161 U.S. 646, 673 (1896))).

Consistent with these principles, Florida law recognizes a clear distinction between rights that are "vested" and rights that are merely "expectant":

> [Rights] are vested when the right to enjoyment, present or prospective, has become the property of some particular person or persons, as a present interest. They are expectant when they depend upon the continued existence of the present condition of things until the happening of some future event.

R.A.M. of S. Fla., Inc. v. WCI Cmtys., Inc., 869 So. 2d 1210, 1218 (Fla. 2d DCA 2004) (quoting *Pearsall*, 161 U.S. at 673)).

Thus, Ms. Townsend faces two insurmountable problems. First, she cannot point to any language in the 1998 legislation that "clearly and unequivocally" expresses legislative intent to create a vested right not subject to future prospective

amendment. Indeed, when the Legislature intends to create a vested right, it knows how to do so. *See, e.g.*, § 121.011, Fla. Stat. (2012) ("[a]s of July 1, 1974, the rights of members of the retirement system established by this chapter are declared to be of a contractual nature, entered into between the member and the state, and such rights shall be legally enforceable as valid contract rights and shall not be abridged in any way"). Second, at best she has an expectant right to future interest at 6 percent because the right she claims is based upon "the happening of some future event": the *future* accrual of interest. *See R.A.M.*, 869 So. 2d at 1218; *see also Noe*, 307 N.E.2d at 379 (noting that "[i]nterest accrues only on a daily basis"). In fact, that is precisely the holding in *Morley*. *See Morley*, 146 U.S. at 168 (noting that judgment creditors "have a vested right in the damages which shall have accrued *up to the date of the legislative change*," and that, afterwards, their rights are "just what the legislature chooses to declare" (emphasis added)).

3. The Legislature in 1998 could not restrict future Legislatures from amending the post-judgment interest rate

Third, under well-established Florida law, when amending section 55.03 in 1998, the Legislature could not restrict the right of future Legislatures to amend the post-judgment interest rate or to apply those changes on a prospective basis to existing judgments. *See Neu v. Miami Herald Publ'g Co*., 462 So. 2d 821, 824 (Fla. 1985) (stating that "[a] legislature may not bind the hands of future legislatures by prohibiting amendments to statutory law"); *see also Ware v.*

Seminole Cnty., 38 So. 2d 432, 433 (Fla. 1949) (noting that the most recent legislative enactment controls over prior laws because "[t]o hold otherwise would mean that one legislature could bind a future legislature and interfere with the exercise of its orderly functions. That this cannot be done is too academic to discuss.").

This Court rejected an analysis similar to the one suggested by Ms. Townsend in *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013). There, the Legislature amended the statute governing the Florida Retirement System, converting a plan that required the *employer* to make contributions to retirement plans to one that, as of the effective date of the statute, required *employees* to contribute to their own plans. *Id.* at 381-82. The lower courts found that a provision known as the "preservation of rights" statute forever locked in the rights of employees who had been receiving employer contributions to their plans—even after the Legislature modified the law. This Court rejected that analysis, however, and held that the "preservation of rights" statute could not bind future Legislatures from making prospective changes to the retirement plan. *Id.* at 389.

The reason Florida law precludes one Legislature from tying the hands of a future Legislature is straightforward: legislative policies and priorities change over time. *See Nat'l R.R. Passenger Corp.*, 470 U.S. at 466. The amendments to section 55.03 present a textbook example of shifting legislative priorities.

Before 1994, the Florida Legislature had always provided for fixed interest rates. Because interest rates were fixed, they changed only when the Legislature amended the statute to set a different fixed rate—as it did in the 1933 legislation addressed in *Glades County*. In 1994, however, the Legislature shifted from a specified interest rate to an interest rate that would be adjusted periodically. In 1998, the Legislature changed the approach once again and reverted to a fixed-rate approach. Legislative analyses of the 1998 amendment explained that the purpose of the change was to "reduce the administrative burdens faced by sheriffs, clerks of the circuit courts, and certain financial institutions. Currently, the rate of interest paid on judgments must be recalculated based upon annual adjustments by the comptroller." Fla. H.R. Comm. On Civil Justice & Claims, CS/HB 935 (1998) Staff Analysis at 2-3 (March 27, 1997). In other words, the 1998 amendment simply restored the calculation of post-judgment interest to the way it was handled before 1994—when judgments contained a fixed rate.

With the 2011 amendments, however, the pendulum swung back. The Legislature determined that the "burdens" of adjustable rates were comparatively minor and that adjustable rates were preferable to providing judgment holders interest at well above market rates. The Senate analysis of the 2011 amendments acknowledged some "small" administrative impact with returning to an adjustable rate, but concluded that the change was warranted to better reflect "current market

conditions throughout the payment period, not just the market conditions at the time the judgment was entered." *See* Fla. Senate Gov't Oversight & Accountability Comm., Bill Analysis & Fiscal Impact Statement, CS/CS/SB 866, at 3 (March 24, 2011).

Under Ms. Townsend's argument, the Legislature in 2011 was powerless to enact this policy change even to interest that had yet to accrue—a result at odds with the fundamental right of legislatures to set state policy and to apply those policies to future events. *See Nat'l R.R. Passenger Corp.*, 470 U.S. at 466. But the 1998 legislation did not purport to tie the Legislature's hands in 2011 any more than the 1866 act addressed in *Glades County* prevented the Legislature from changing the rate in 1933 and the courts from applying that change to existing judgments.

Notably, the 2011 statute is equally mandatory in providing that the interest rate "*shall* be adjusted annually ... *until the judgment is paid*." § 55.03(3), Fla. Stat. (2011) (emphasis added). If Ms. Townsend is correct, future Legislatures could not elect to stop rates from fluctuating on judgments entered today even if the Legislature determined that fluctuating interest rates were causing undue administrative burdens for courts and sheriffs.

4. The Legislature is presumed to know how courts have interpreted the common law when it enacts legislation

Finally, "the 'legislature is presumed to know the judicial constructions of a law when enacting a new version of that law' and 'the legislature is presumed to have adopted prior judicial constructions of a law unless a contrary intention is expressed in the new version.'" *Essex Ins. Co. v. Zota*, 985 So. 2d 1036, 1043 (Fla. 2008) (quoting *Jones v. ETS of New Orleans, Inc.,* 793 So.2d 912, 917 (Fla.2001)). Here, the Legislature has amended the judgment interest rate statute at least 10 times over the past century, and Florida courts have always applied the new rate to interest accruing on existing judgments after the change unless the Legislature expressly directed otherwise. *See Glades Cnty.*, 101 F.2d at 760; *Applestein*, 586 So. 2d at 442. Thus, when the Legislature amended section 55.03 in 2011, it was presumed to know this construction.

Had the Legislature intended the 2011 amendments to apply only to judgments entered after the July 1, 2011 effective date of the act, it would have said so—precisely as it did when it amended the same act in 1980 and again in 1994. *See Applestein,* 586 So. 2d at 441-42 (noting that 1980 amendment, on its face, stated that it applied only to "any judgment or decree entered on or after the effective date of this act"); *Beverly Enters.-Fla.*, 689 So. 2d at 1231 (holding that 1994 amendments did not apply to judgments entered before the effective date of the amendments because the act applied to judgments entered after January 1,

1995). It certainly would not have retained statutory language making the statute apply to all "[j]udgments obtained on or after January 1, 1995" if it had wanted to limit the amended statute's application to judgments entered after July 1, 2011. By its terms, the amended statute is not one whose application is limited to new judgments. Instead it is consistent with the traditional rule.

III. Reynolds does not seek to apply the amendments retroactively

Ms. Townsend spends much of her brief arguing that the 2011 amendments cannot be applied to her judgment because the Legislature did not express its intent that the amendments apply retroactively and because a retroactive application would be unconstitutional. There are at least two problems with this argument.

First, Reynolds does not seek to apply the 2011 amendments retroactively. Instead, Reynolds asks only that the amendments apply *prospectively* to interest accruing *after* the effective date of the amendments on *all* judgments, including judgments entered before the effective date of the act. This is not a retroactive application. *See Velasquez-Gabriel v. Crocetti*, 263 F.3d 102, 108 (4th Cir. 2001) ("[a] court must bear in mind that '[a] statute does not operate 'retrospectively' merely because it is applied in a case arising from conduct antedating the statute's enactment … or upsets expectations based in prior law" (quoting *Landgraf v. USI Film Prods*., 511 U.S. 244, 269 (1994))).

Again, this Court's decision in *Scott* is instructive on the retroactivity analysis. In *Scott*, the Court held that, because the retirement plan changes altered the contribution requirements only *after* the amended statute's effective date, they operated prospectively and did not affect any vested rights employees had in their pension benefits before the statute was amended:

> We further hold that the 2011 amendments requiring a 3% employee contribution *as of* July 1, 2011, and continuing thereafter, and the elimination of the COLA for service performed *after that date* are prospective changes within the authority of the Legislature to make. The preservation of rights statute does not create binding contract rights for existing employees to *future* retirement benefits based upon the FRS plan that was in place prior to July 1, 2011.

Scott v. Williams, 107 So. 3d at 389 (emphasis added). The Court reached this conclusion even though the changes decreased the total expected retirement benefits that would accrue for individuals employed both before and after the amendments. *See id.* at 386; *see also Rivera v. Becerra*, 714 F.2d 887, 896 (9th Cir. 1983) (rejecting argument that changes to federal pension laws impermissibly applied retroactively to pensions that had already vested because "Congress did not alter anyone's vested pension rights; it adjusted the manner in which public benefits would be distributed in the future").

Courts across the country have uniformly reached the same conclusion on this precise issue—whether changing the post-judgment interest rate on

outstanding judgments is an impermissible retroactive application of a statute. As the Court of Appeals of Maryland observed:

> Our construction of this statute is not, as the appellant attempts to characterize it, a retroactive application. A retroactive application would not only apply the 10 percent interest rate to all outstanding judgments, but the 10 percent rate would run *from the date of the judgment*, even if it was entered before July 1, 1980. Ours is a prospective application of the *new rate*, i.e., the new rate applies, after July 1, 1980, to all outstanding judgments. Before that date interest will accrue at the old rate.

Mayor, 449 A.2d at 410 (emphasis in original). Similarly, the Illinois Supreme Court rejected the argument that applying new statutory changes to the judgment interest rate from the effective date of the amendment gave the amendment retroactive effect. *Noe*, 307 N.E.2d at 379. Instead, the court observed that changing the rate from the effective date of the amendment did not deprive the plaintiff of any "rights which have already accrued and vested under a previous statutory rate" because "[i]nterest accrues only on a daily basis." *Id*.; *see also Shook & Fletcher*, 684 F.2d at 1389 (disagreeing that the court's interpretation of the statutory amendments was "retroactive"); *McBride*, 635 P.2d at 179 (noting that its ruling that the amended statutory rate applied "was not retroactive but prospective after the effective date of the statute"). These decisions reinforce what the *Appelstein* line of cases makes clear: there is nothing unusual or disfavored about applying new interest-rate statutes to post-enactment accruals.

Second, even assuming applying the 2011 amendments to future accruals of interest on existing judgments could be construed as a retroactive application, it would still be constitutional because it would not deprive Ms. Townsend of any vested rights. Instead, as demonstrated above, Ms. Townsend had a vested right to interest that had already accrued by July 1, 2011, but had, at best, an expectant right to *future* interest at 6 percent, which the Legislature was free to alter or eliminate. Indeed, that was the precise holding in *Morley* more than 120 years ago. *See Morley*, 146 U.S. at 168 (holding that a judgment owner has "a vested right in the damages which shall have accrued up to the date of the legislative change; but after that his rights as to interest as damages are, as when he first obtained his judgment, just what the legislature chooses to declare"); *see also Scott*, 107 So. 3d at 389 ("the elimination of the COLA for service performed after that date are prospective changes within the authority of the Legislature to make"); *Noe*, 307 N.E.2d at 350 (holding that "[t]he legislature may increase, decrease or eliminate the statutory interest rate as long as it does not interfere with rights *which have already accrued and vested* under a previous statutory rate" (emphasis added)).

IV. The policy considerations raised by the amici are misplaced

The Florida Justice Association ("FJA"), serving as amici in support of Ms. Townsend, paints a bleak picture of the consequences of the First District's decision. According to the FJA, the decision not only deprives Ms. Townsend and

other plaintiffs of a "vested right," but also threatens to undermine both the public's confidence in "legislative word," and stability in the marketplace for judgments.

Hyperbole aside, the threshold problems with the FJA's arguments are the same as the problems with Ms. Townsend's arguments. Both mistakenly assume that the Legislature created a vested right to interest accruing in the future at a particular rate, and both assume that the Legislature was unaware of the rule stated in *Morley*, *Glades County* and *Applestein* when it enacted the 1998 and 2011 amendments. Florida law is to the contrary. The FJA may think it was unwise for the Legislature to abandon the fixed-rate approach when it amended the statute in 2011, but it had every right to do so and to assume that those changes would apply prospectively, even to existing judgments.

More fundamentally, the FJA's arguments are short-sighted and overlook the neutral nature of the First District's decision. While the FJA may represent the interests of many clients with unpaid judgments originally obtained at higher rates, any judgment debtors represented by FJA attorneys would likely take a less charitable view of their argument. And because judgment interest rates fluctuate under the 2011 amendments, they will undoubtedly rise over time—possibly to levels higher than the 6 percent Ms. Townsend claims she is entitled to receive here—thereby eventually benefiting judgment creditors. Thus, the First District's

decision treats judgment debtors and creditors neutrally. *See Mayor*, 449 A.2d at 410 ("[j]ust as the judgment creditor has no right to interest except that which the legislature decrees, the judgment debtor has no right to a limitation of the interest rate to be applied in the future, except that which is decreed by the legislature"). Equally important, it ensures that the rates paid by creditors—and received by debtors—mirror market rates more closely, precisely as the Legislature intended.

CONCLUSION

For the foregoing reasons, the Court should answer the certified question in the negative and approve the First District's decision.

Respectfully submitted:

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CERTIFICATE OF SERVICE

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CERTIFICATE OF COMPLIANCE

Pursuant to Florida Rule of Appellate Procedure 9.210(2), counsel for Respondent hereby certifies that the foregoing brief complies with the applicable font requirements because it is written in 14-point Times New Roman font.

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