

No. 25-41

In the
Supreme Court of the United States

JAN PETERS,

Petitioner,

v.

MALIA M. COHEN, INDIVIDUALLY AND IN HER
OFFICIAL CAPACITY AS STATE CONTROLLER OF THE
STATE OF CALIFORNIA, AND AS TRUSTEE OF THE
UNCLAIMED PROPERTY FUND,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

**MOTION FOR LEAVE TO FILE BRIEF AS
AMICUS CURIAE AND BRIEF AMICUS CURIAE
OF FK FINANCIAL, INC. IN SUPPORT OF
PETITIONER**

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**MOTION FOR LEAVE TO FILE BRIEF AS
AMICUS CURIAE**

Pursuant to Rule 21.2(b), FK Financial, Inc. respectfully requests leave to submit a brief as amicus curiae in support of the petition for writ of certiorari filed by Jan Peters in this matter.¹

The undersigned was retained fewer than ten days before the due date for this Motion and Brief, and therefore was unable to give the notice required by Rule 37.2. However, given that Amicus is supporting the Petitioner and the Respondent has waived the right to respond to the Petition, the late notice will not prejudice any party.

FK Financial is not a frequent amicus before this Court, but is instead in a similar position as the Petitioner vis-à-vis California's unconstitutional overreach. But because FK Financial is not a party to this case, it desires to bring its position before the Court as an amicus. *See generally* Trump v. CASA, Inc., 606 U. S. ____ (2025) (rights of non-parties generally not considered or afforded relief by federal courts' judgments).

FK Financial appears here in support of Petitioner because the questions presented raise significant issues concerning vital constitutional questions in FK Financial's industry of holding and managing property for others, and because of the risk

¹ No counsel for either party authored this Brief in whole or in part. No one other than amicus made a monetary contribution intended to fund the preparation of the brief.

by unconstitutional overreach by California and others.

Accordingly, FK Financial respectfully asks the Court to grant it leave to file this amicus brief.

Respectfully submitted,

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QUESTIONS PRESENTED

1. Whether the Controller's actions under color of the California Unclaimed Property Law, Cal. Civ. Proc. Code §§ 1300, et seq. ("UPL"), violate the Due Process Clause of the Fourteenth Amendment because they deprive owners of their property without affording constitutionally adequate notice.

2. Whether the Controller's actions under color of the California UPL violate the Takings Clause of the Fifth Amendment because state employees and their commissioned private auditors seize, sell, and destroy private property without just compensation.

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IDENTITY AND INTEREST OF AMICUS CURIAE

FK Financial, Inc., a Texas corporation (“FK Financial”), respectfully submits this brief amicus curiae in support of the Petition for Writ of Certiorari submitted by Petitioner Jan Peters.

Under color of California’s Unclaimed Property Law, Cal. Civ. Proc. Code §§ 1300, *et seq.* (“UPL” or “Unclaimed Property Law”), state officials have begun seizing federal retirement plans, like that of Petitioner, a German citizen’s federal retirement plan dictated by German laws. FK Financial is a California-based financial services company formerly engaged in offering retirement and profit-sharing plans, including a 401(k) plan, to its employees and stakeholders. Through its representatives, FK Financial made repeated efforts to recover the assets associated with its 401(k) profit-sharing plan, but faced significant procedural obstacles despite providing substantial documentation and proof of ownership. The company’s interest in this matter arises from its direct involvement in the disputed property and its commitment to ensuring that its former stakeholders receive fair and lawful treatment in the recovery process.

Given the conduct of California’s State Controller—Respondent here—there is no way for any citizen or company to protect itself from this unnoticed property seizure program. FK Financial submits this amicus curiae brief to support Petitioner’s odyssey-like endeavor to reestablish the principle that due process protections must extend to claimants of unclaimed property, particularly when rigid bureaucratic requirements threaten to deprive

individuals and entities of their rightful assets. FK Financial urges the Court to recognize the need for equitable standards in evaluating ownership claims and to affirm that procedural fairness is a constitutional imperative in the administration of unclaimed property laws.

SUMMARY OF THE ARGUMENT

The State of California's attempt to assert control over the unclaimed federally administered 401(k) profit-sharing plan assets associated with FK Financial constitutes a violation of due process and an impermissible intrusion into federally governed territory. California has no right, regardless of its sovereignty, to escheat funds merely because they are found within the boundaries of the State. *See In re Lindquist's Estate*, 154 P.2d 879, 886 (Cal. 1944). The Supreme Court of California made clear that a state escheat statute "may not prevail over the United States Constitution or over a congressional act which does not deprive one of property interests without due process of law." *Id.* Here, the State's rigid and prolonged administrative process, coupled with its refusal to recognize substantial evidence of ownership, effectively deprives FK Financial and its stakeholders of property without fair procedure.

Moreover, the State's actions are preempted by the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001, *et seq.*, which establishes a comprehensive framework for the administration of employee benefit plans. ERISA prohibits states from stepping "into the plan's shoes." *Commonwealth Edison Co. v. Vega*, 174 F.3d 870, 875 (7th Cir. 1999) ("This case is different because the state does not

claim to have an ownership interest in unclaimed benefits. It doesn't want to step into the shoes of the beneficiary; it wants to step into the plan's shoes. That is precisely what ERISA bars."). California's attempt to claim and control the 401(k) funds not only disrupts the uniformity ERISA was designed to protect but also amounts to an unconstitutional regulation of federal property. *Resolution Tr. Corp. v. California*, 851 F. Supp. 1453, 1457 (C.D. Cal. 1994). The Supremacy Clause does not permit states "to take over a federal program just because they think they can do it better." *Id.* FK Financial's experience exemplifies the dangers of such overreach and underscores the need for judicial intervention to reaffirm the primacy of federal protections and due process in the administration of retirement assets.

REASONS FOR GRANTING THE WRIT

FK Financial endured the expansive and burdensome claim process with the California State Controller's Office in its effort to recover unclaimed assets from a 401(k) profit-sharing plan. There are no regulations to guide this claim process; rather, California has 300+ pages of "guidelines," bulletins, notices, *etc.*, listed on a website. These documents are only accessible through the internet and are not easily accessible by the general public. From the outset, the company submitted extensive documentation, including notarized acknowledgments, personal identification, and historical records. Yet the State repeatedly demanded additional documents that, due to the age of the claim and the dissolution of the business, no longer exist. FK Financial explained that the plan had never been formally executed, and that trustee records could not be reconstructed.

Despite these limitations, FK Financial made extraordinary efforts to comply, hiring asset recovery consultants and specialized attorneys. Documents were retrieved from storage, and the claimant provided every available record demonstrating ownership and intent. Nevertheless, the State continued to insist on rigid formalities, such as a completed and signed copy of the original 401(k) plan documents, and formal proof of trustee status, while offering no clear guidance on acceptable alternatives. The claim, filed over a year ago, was acknowledged and forwarded for further review, yet no resolution was provided. Instead, the State offered vague timelines and failed to accommodate the realities of the situation. This procedural stagnation and refusal to accept credible evidence deprived FK Financial of a fair opportunity to assert its property rights, in violation of the Fourteenth Amendment's Due Process clause.

California's attempt to assert control over the 401(k) assets of FK Financial directly conflicts with federal law governing employee benefit plans. ERISA's comprehensive and exclusive federal framework for the administration of such plans bars a hostile state takeover. As the Seventh Circuit emphasized, no matter how forcefully a state believes it can administer an ERISA plan better, ERISA bars the act of taking possession and managing funds of the plan. *Commonwealth Edison*, 174 F.3d at 871. California's actions—by attempting to claim, hold, and potentially redirect the 401(k) funds—constitute precisely the kind of interference ERISA was designed to prevent. *Id.* at 875. Moreover, California's application of its Unclaimed Property Law to ERISA-governed retirement assets is not only preempted but

also represents a direct usurpation of federally protected interests. In effect, the property is an interest-free loan to the state—in perpetuity if the owner never shows up to claim it. *Id.* at 872.

“[T]here is no reason why employee benefit plans cannot be subject to nationally uniform supervision,” free from state-by-state interference with property rights. *See Mfrs. Life Ins. Co v. E. Bay Rest. & Tavern Ret. Plan*, 57 F. Supp. 2d 921, 923 (N.D. Cal. 1999); *id.* at 924 (granting the ERISA plan administrators motion for summary judgment and noting: “While the states in all three cases attempt to secure the benefit of interest on unclaimed benefits, only California and Illinois propose to confiscate funds in which an ERISA plan has a direct financial interest.”).

The writ should be granted to prevent ongoing constitutional violations and to reaffirm the primacy of federal law in the administration of retirement assets.

ARGUMENT

I. The State of California’s Mishandling of FK Financial’s Claim Violated Due Process.

The process FK Financial undertook to recover unclaimed 401(k) assets from the California State Controller’s Office was not only burdensome but constitutionally deficient. The claim, filed over a year ago, was met with a series of escalating demands for documentation that either never existed or could no longer be produced due to the age of the claim and the dissolution of the business. Kristin Farmer, the claimant and former principal of FK Financial, was required to submit a completed and signed copy of the

FK Financial 401(k) Profit Sharing Plan. However, the plan had never been formally executed due to personal and business disruptions, including a divorce between former business partners. When FK Financial contacted the IRS to obtain Form 5500 filings, the agency confirmed that no such filings were on record and refused to issue a letter verifying that absence, stating that only the State could request such confirmation on its own.

Despite these obstacles, FK Financial made additional extraordinary efforts to comply. Documents were retrieved from a storage unit, including a partially executed plan and notarized acknowledgments. The claimant submitted identification, a grant deed, and other materials demonstrating ownership and intent. Yet the State continued to demand formal trustee documentation, rejecting title company records and insisting on documents that had long since been lost or destroyed. The State's responses were vague and noncommittal, advising FK Financial to "check back in 6–8 weeks," while offering no substantive guidance or resolution. This pattern of delay and inflexibility deprived FK Financial of a meaningful opportunity to assert its property rights. It led it to hire an asset recovery firm and a specialized attorney to have its claim heard.

The California Supreme Court has made clear that the State cannot rely on its sovereign authority to escheat property. In *Estate of Lindquist, supra*, the Court held that "California has no right, by virtue of its sovereignty, to escheat funds merely because they are found within the jurisdiction of the state." *Id.*, at 699. More importantly, the Court emphasized that "a state escheat statute... may not prevail over the United States Constitution or over a congressional act

which does not deprive one of property interests without due process of law.” *Id.* at 710. FK Financial’s experience illustrates precisely the kind of administrative rigidity and procedural unfairness that the constitution’s due process clause is designed to prevent.

Granting certiorari will harmonize the law and protect vulnerable owners, who may have fewer resources to pursue these claims.

II. Owners Cannot Claim The Value From The Sale And Destruction of Their Private Property Because There Are no APA-Approved Regulations to Guide The UPL Process.

Owners cannot claim the remains or salvage value from the sale and destruction of their private property, because there are no APA-approved regulations to guide the UPL process. On the contrary, the State purports to rely on 300+ pages of miscellaneous information posted only on the Controller’s website. *See* California Administrative Procedure Act (APA), Gov. Code §§ 11340, *et seq.*; *Tidewater Marine West, Inc. v. Bradshaw*, 927 P.2d 296, 298 (Cal. 1996) (concluding that state “interpretive policies do not constitute regulations and therefore are void because they were not adopted in accordance with the APA.”).

Respondent is required by law to promulgate and to publish written regulations that explain the various rules that she creates as part of her claim process, pursuant to California’s APA, *supra*. The California Supreme Court held:

The APA provides that “no state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter.”

Tidewater Marine, 927 P.2d at 303–304 (quoting Cal. APA, Govt. Code § 11340.5).

The Controller never promulgated any regulations pursuant to the APA that explain what Respondent (1) expects from companies that are audited and otherwise required to transfer property to the state agency, or (2) used to guide her claim process.

Accordingly, the constantly changing “notices,” “guidelines,” “forms,” “regulations,” and other pronouncements of new rules that pertain to notices sent by holders, due diligence and the conduct of audits, the claim process that the Controller periodically writes and posts on her website are “void” as a matter of law, because they were never adopted in accordance with the APA. *Tidewater Marine*, 927 P.2d at 195.

III. California’s Unnoticed Seizure of ERISA-Governed Retirement Assets Violates the Supremacy Clause.

The assets at issue in FK Financial’s claim are governed by ERISA. As noted above, its

comprehensive framework for the administration of employee benefit plans preempts states from regulating or interfering with the operation of such plans. But California's attempt to assert control over the 401(k) assets—by demanding plan documents, trustee certifications, and ultimately preventing the return of funds—constitutes an impermissible intrusion into federally protected territory.

ERISA bars states from stepping into the shoes of plan administrators. As the Seventh Circuit squarely and properly recognized, when a “state does not claim to have an ownership interest in unclaimed benefits,” but rather wants to obtain them, “[i]t doesn't want to step into the shoes of the beneficiary; it wants to step into the plan's shoes.” *Commonwealth Edison*, 174 F.3d at 875. But “[t]hat is precisely what ERISA bars.” *Id.* California's conduct in this instance mirrors that prohibited behavior. By attempting to manage the disposition of FK Financial's 401(k) assets, the State is not merely facilitating the recovery of a property—it is regulating the plan itself.

The Supremacy Clause of the Constitution prohibits such overreach. The United States District Court for the Central District of California held that California's attempt to control federal deposit insurance funds violated the Supremacy Clause, stating, “The Supremacy Clause does not permit [states] to take over a federal program just because they think they can do it better.” *Resolution Tr.*, 851 F. Supp. at 1457.

The same principle applies here. California's Unclaimed Property Law cannot override ERISA's federal protections, nor can it justify the seizure of

retirement assets under the guise of state administration.

This exact type of overreach is further condemned (yet, to no avail) in *Manufacturers Life Insurance Company v. East Bay Restaurant & Tavern Retirement Plan*, 57 F. Supp. 2d 921 (N.D. Cal. 1999), where the court found that California’s application of its Unclaimed Property Law to ERISA-governed assets was “a direct usurpation of the plan’s position vis à vis a plan asset.” *Id.* at 924–925. FK Financial’s 401(k) plan, though informally structured, falls within ERISA’s scope, and the State’s attempt to manage or redirect those assets is preempted and unconstitutional.

* * *

In sum—and somewhat differently from the experiences of Petitioner as expressed in his petition—California’s actions as against FK Financial not only violate due process by imposing unreasonable and unattainable documentation requirements, but they also infringe upon federal supremacy by attempting to regulate ERISA-governed retirement assets. The writ should be granted to prevent further constitutional violations and to reaffirm the primacy of federal law in the administration of retirement benefits.

CONCLUSION

The Court should grant the petition in order to review and correct the California’s grievous overreach.

Respectfully submitted,

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