APPENDIX B

LJAF POLICY PERSPECTIVE

Pension Litigation Summary

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Introduction

State and municipal pension systems are in financial trouble. According to a 2012 Pew Center on the States report,[1] state pension plans estimate that they were collectively $757 billion short of the funding needed to meet the pension promises that had, as of that publication, been made to public employees. Moreover, that figure depends on a risky set of assumptions (*e.g.*, expected rate of return and life expectancy) and may be considerably larger if reality does not match the predictions made by each system. Estimates produced using more conservative assumptions, similar to those used for private sector pensions, approximately double the shortfall.[2]

Regardless of the exact size of projected deficits, rising annual pension costs have already spurred financial distress in many jurisdictions. For instance, Central Falls, Rhode Island, recently declared municipal bankruptcy because of unaffordable pension costs. In Chicago, Mayor Rahm Emanuel has pointed out that the city faces $20 billion in unfunded liabilities and will soon spend a staggering $1.2 billion per year solely on pension costs, or roughly 22 percent of Chicago's entire budget. As Mayor Emanuel stated, "Our taxpayers cannot afford to choose between pensions and police officers, or pensions and paved streets."

In light of looming deficits, states and municipalities across the country are taking steps to reform their pension systems. While some reforms are relatively modest, a few jurisdictions have enacted comprehensive reforms that aim to solve their pension problems permanently. Enacted reforms generally have addressed the following: cost-of-living adjustments, increases in retirement age and contribution rates, and establishment of defined contribution, cash balance and hybrid plans.

Once reforms occur, however, they are often challenged in the courts. Within the past three years, at least 24 jurisdictions have faced lawsuits alleging that pension reform measures are unconstitutional. Such jurisdictions include Colorado, Florida, Massachusetts, Minnesota, New Hampshire, New Jersey, New Mexico, Rhode Island, South Dakota, Chicago, San Diego, and San Jose.

The most significant legal claim raised against pension reform legislation is that it violates the Contracts Clause of the U.S. Constitution or a state's constitutional parallel (including additional provisions specifically protecting pension rights). In both the U.S. and state constitutions, such a clause provides that the government may not pass laws that abrogate contractual responsibilities. The argument of pension reform opponents is that a pension promise to a state employee is essentially a contract, and that legislation that diminishes pension benefits alters the terms of the state's contractual obligation to provide the agreed-upon remuneration to the employee.

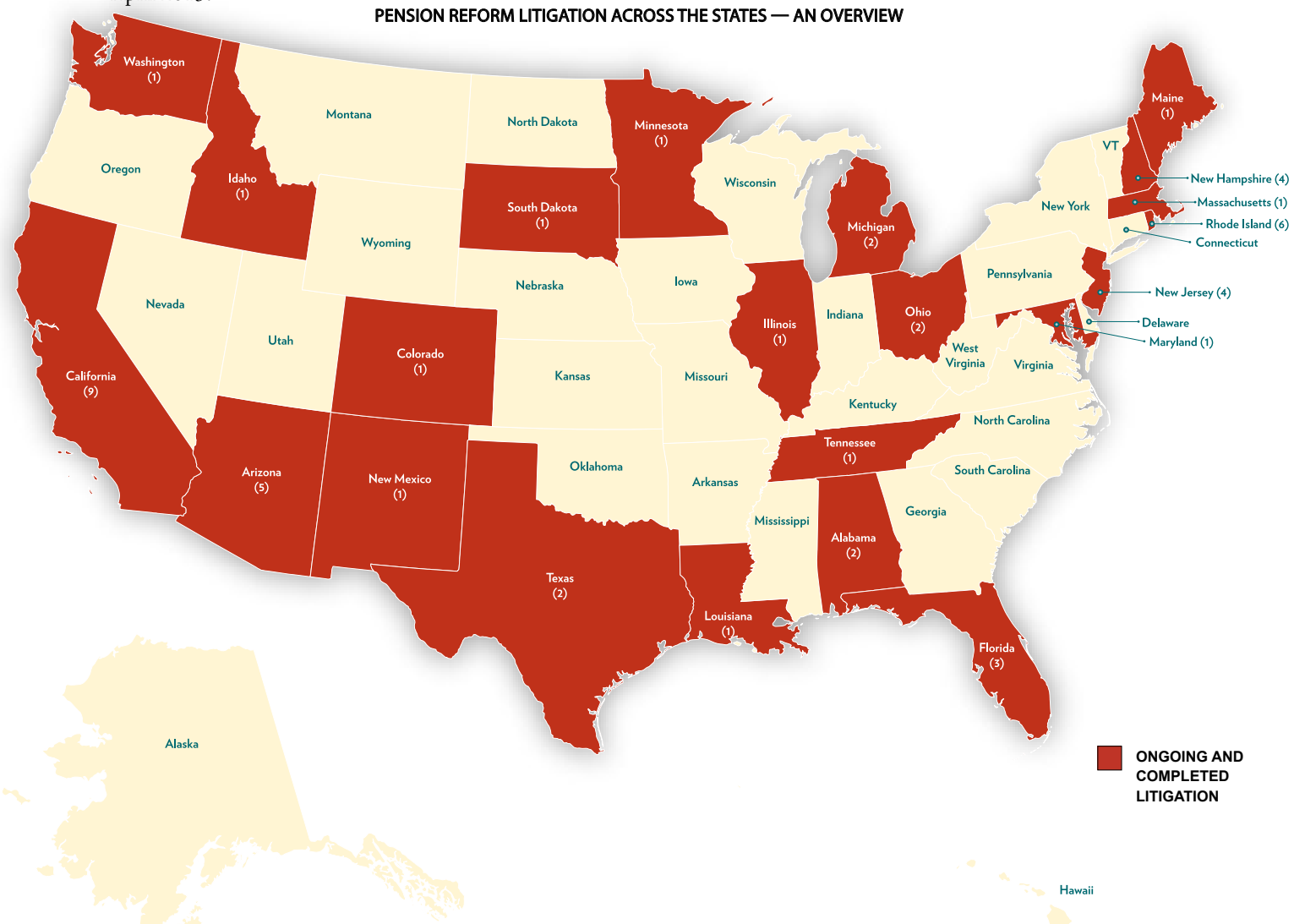
1 Pew Center on the States. (2012). *The Widening Gap: the great recession's impact on state pension and retiree health care costs.* Washington, DC.

2 Novy-Marx, R., & Rauh, J. (2011). Public Pension Liabilities: How Big Are They and What Are They Worth? *Journal of Finance, 66* (4), 1211-1249.

Courts have expressed a wide range of views on pension reform issues, at times arriving at diametrically opposite conclusions. For example, reductions of cost-of-living adjustments were upheld in Colorado, Minnesota, New Jersey, and South Dakota state courts, whereas the same adjustments were struck down in Arizona. Many other significant pension reforms, such as those in Rhode Island or the City of San Jose, California, are currently being litigated. To date, there is little to no definitive guidance or uniformity of interpretation on these matters, either at a state or federal level.

We are currently aware of 54 lawsuits that were filed or that were the subject of a court decision between 2009 and April 2013.

PENSION REFORM LITIGATION ACROSS THE STATES — AN OVERVIEW



Unfortunately, it is difficult to get a comprehensive overview of the state of public pension reform litigation and the many lawsuits around the country because court decisions and litigation documents are very difficult to find online. Many state courts do not have websites that make decisions (much less interim filings by the parties) publicly available, and federal court decisions are often unpublished and available only for a fee via the Public Access to Court Electronic Records system.The following state-by-state review addresses this informational problem.[3] This review represents a centralized resource that monitors the lawsuits and court decisions currently challenging public pension reform.

3 Where possible, we have provided links to actual court documents. Users can click on documents listed in the "Reference Document" box for each case.

Alabama

Taylor v. City of Gadsden

NO. 4:11-CV-03336

United States District Court for the Northern District of Alabama
Judge Virginia E. Hopkins
Filed 9/15/2011

REFERENCE DOCUMENTS:

Complaint
Amendment to Complaint
Order on Motion to Dismiss

Type of Pension Reform: Increased employee contribution.

Title of Bill: HB 414

Date Enacted: 6/9/2011

Basis of Lawsuit: State and U.S. Contracts clauses.

Date of Initial Opinion: 2/23/2012

Outcome of Initial Opinion: Motion to dismiss was denied.

Reasoning: The Court held that the Alabama pension system did establish a contractual relationship and did not have to satisfy the "unmistakable" standard merely to survive a motion to dismiss. Next, the rise in employee contribution rates could possibly be a substantial impairment, because it was not accompanied by any countervailing benefit. The Court, therefore, let the lawsuit go forward to a trial on all of these issues.

Pending Developments: The most recent scheduling order provides that dispositive motions are due by April 11, 2013.

Wood v. Retirement System of Alabama

NO. NOT AVAILABLE

Montgomery County Circuit Court, Alabama
Filed 6/1/2012

Type of Pension Reform: Increased contributions for state judges from 6 percent to 8.5 percent.

Title of Bill: HB 414

Date Enacted: 6/9/2011

Basis of Lawsuit: State constitution prevents reducing judges' pay during their term of office.

Arizona

Barnes v. Arizona State Retirement System

NO. CV-2011-011638

Superior Court of Arizona, Maricopa County
Judge Eileen S. Willett
Filed 7/13/2011

REFERENCE DOCUMENTS:

Court Decision

Type of Pension Reform:	Increased employee contribution.
Title of Bill:	SB 1614
Date Enacted:	4/6/2011
Basis of Lawsuit:	State Contracts Clause and pension protection clause.
Date of Initial Opinion:	2/3/2012
Outcome of Initial Opinion:	Ruling in favor of plaintiffs.
Reasoning:	Given the Arizona constitutional provision stating that pension benefits cannot be diminished or impaired, it was illegal to make employees pay more for a benefit than they had paid when first starting employment. The impairment was substantial and lacked any public purpose.
Pending Developments:	None. As of May 7, 2012, state lawmakers in Arizona enacted House Bill 2264 to reverse the contribution rate change and mandated a refund of the excess contributions.

Fields v. Elected Official Retirement Plan of the State of Arizona

NO. CV-2011-017443

Superior Court of Arizona, Maricopa County
Judge Robert Oberbillig
Filed 9/22/2011

REFERENCE DOCUMENTS:

Court Decision

Type of Pension Reform:	Reduced cost-of-living adjustment.
Title of Bill:	HB 1609
Date Enacted:	4/29/2011
Basis of Lawsuit:	State Contracts Clause and pension protection clause.
Date of Initial Opinion:	5/21/2012 and 8/30/2012
Outcome of Initial Opinion:	Declaratory ruling in favor of plaintiffs, followed by a later injunction that ordered the state to transfer funds into a reserve for future benefit increases and to pay retirement benefits based on the previous law.

Arizona

Reasoning: The Arizona Constitution (Article XXIX, section 1(c)) provides that "public retirement benefits shall not be diminished or impaired." In this case, the plaintiffs had all already retired, had "fully performed every condition for a benefit," and "the benefits that Plaintiffs are vested in are plainly the benefits in effect at the time of their retirement." Thus, reducing cost-of-living adjustments thereafter was not allowed.

Pending Developments: As of November 13, 2012, the Arizona Court of Appeals docketed an appeal. The State asked the Arizona Supreme Court to hear an immediate appeal. On January 8, 2013, the Arizona Supreme Court agreed, and briefing of that case should be completed in April 2013.

Hall v. Elected Officials' Retirement Plan

NO. CV-2011-021234

Superior Court of Arizona, Maricopa County
Judge Douglas Rayes
Filed 11/30/2011

Type of Pension Reform: Reduced cost-of-living adjustment.

Title of Bill: HB 1609

Date Enacted: 4/29/2011

Basis of Lawsuit: Two Arizona appellate judges sued on behalf of all Arizona state judges based on the state Contracts Clause and pension protection clause, but also based on the Arizona Constitution's judicial salary clause.

Pending Developments: Motions for summary judgment were filed on November 7, 2012; oral argument was heard on February 11, 2013. The judge plans to issue a ruling shortly, after which the parties have agreed to seek immediate review by the Arizona Supreme Court.

Rappleyea v. Public Safety Personnel Retirement System

NO. CV-2012-000404

Superior Court of Arizona
Judge Randall H. Warner
Filed 1/11/2012

Type of Pension Reform: Reduced cost-of-living adjustment.

Arizona

Title of Bill: HB 1609

Date Enacted: 4/29/2011

Basis of Lawsuit: This case challenged SB 1609's amendment to the benefit increase mechanism for the public safety personnel pension system. It relies on the Arizona and federal Contracts clauses and the Arizona retirement benefits clause.

Pending Developments: On February 20, 2013, the judge stayed the case pending the Arizona Supreme Court's decision in the *Fields* case above. A status conference is scheduled for August 28, 2013.

Parker v. Public Safety Personnel Retirement System

NO. CV-2012-000456

Superior Court of Arizona
Judge John Rae
Filed 1/12/2012

Type of Pension Reform: Reduced cost-of-living adjustment.

Title of Bill: HB 1609

Date Enacted: 4/29/2011

Basis of Lawsuit: This complaint represented a class of all active law enforcement officers, and is duplicative of the Rappleyea suit above.

Pending Developments: On February 28, 2013, the court granted the parties' joint stipulation to stay the case pending the Arizona Supreme Court's decision in the *Fields* case above.

California

SAN DIEGO

San Diego Municipal Employees Association v. City of San Diego

NO. LA-CE-746-M

California Public Employment Relations Board
Filed 6/19/2012

REFERENCE DOCUMENTS:

Proposition B
Proposed Order

Type of Pension Reform:	Froze pay levels used to determine final average pay; required defined contribution plan for most new employees.
Title of Bill:	Ballot Initiative-Proposition B
Date Enacted:	6/6/2012
Basis of Lawsuit:	Unfair labor practice.
Date of Initial Opinion:	2/11/2013
Outcome of Initial Opinion:	Administrative law judge issued a preliminary opinion finding an unfair labor practice violation against the City of San Diego; pension reform measure blocked.
Reasoning:	The pension reform measure was really an effort of the Mayor and the City, and hence was subject to collective bargaining requirements before the voters could approve it.
Pending Developments:	Exceptions have been filed and the Public Employment Relations Board is expected to issue a final ruling soon, after which parties can appeal to a California appellate court.

REFERENCE DOCUMENTS:

Petition for Writ of Mandate
Minute Order

Public Employment Relations Board v. City of San Diego

NO. 37-2012-00092205-CU-MC-CTL

San Diego Superior Court
Judge Luis Vargas
Filed 2/14/2012

Type of Pension Reform:	Froze pay levels used to determine final average pay; required defined contribution plan for most new employees.
Title of Bill:	Ballot Initiative-Proposition B
Date Enacted:	6/5/2012
Basis of Lawsuit:	State union law allegedly requiring negotiation with unions before such a ballot measure could be enacted.
Date of Initial Opinion:	Not Available

California

Outcome of Initial Opinion:	Stayed administrative proceedings before the Public Employment Relations Board, which had taken jurisdiction over a labor union complaint that the ballot measure was improperly enacted.
Reasoning:	No reasoning given.
Date of Appellate Decision:	6/19/2012
Outcome of Appeal:	Appellate court overturned the lower court's stay.
Reasoning:	The Public Employment Relations Board does have jurisdiction to consider labor complaints. Nor is administrative exhaustion waived.
Date of Subsequent Opinion:	7/31/2012
Outcome:	On July 10, 2012, Judge Vargas of the Superior Court issued a temporary restraining order requiring a "temporary delay" in implementing the pension ballot initiatied. Then, on July 31, 2012, Judge Vargas lifted the order and rejected a preliminary injunction against the ballot measure.
Reasoning:	Injunctive relief required the court to determine that it is "just and proper" to interfere with the law. The Court chose to exercise discretion to deny relief, because "traditional equitable considerations now weight in favor of the voters, the City of San Diego and of a proper and orderly implementation of the [pension measure]." (Minute Order).
Later Outcome:	On October 25, 2012, PERB voluntarily dismissed the case that it had filed as a plaintiff in state court.[4]

SAN JOSE

CITY LAWSUIT:

City of San Jose v. San Jose Police Officers' Association | NO. 12-CV-02904
United States District Court for the Northern District of California
Judge Lucy H. Koh
Filed 6/5/2012

UNION LAWSUITS:

Sapien v. City of San Jose | NO. 112-CV-225928
San Jose Police Officers' Association v. City of San Jose | NO. 112-CV-225926
Mukhar v. City of San Jose | NO. 112-CV-226574
Harris v. City of San Jose | NO. 112-CV-226570

REFERENCE DOCUMENTS:

- Measure B
- AFSCME Complaint
- Firefighters Complaint
- Harris Complaint
- Mukhar Complaint
- Police Officers' Association Complaint
- City's Federal Complaint
- Federal Court Dismissal

4 See www.cbs8.com/story/19919444/perb-drops-lawsuit-over-prop-b

California

American Federation of State, County, and Municipal Employees, Local 101 v. City of San Jose | NO. 112-CV- 227864

Santa Clara County Superior Court
Judge Patricia M. Lucas
Filed 6/5/2012 and 6/6/2012 and 6/14/2012

Type of Pension Reform: Raised employee contribution rates to pay for unfunded liabilities, lowered cost-of-living adjustments for retirees, changed definition of disability pension, and created a "voluntary election program" that allowed employees to opt into a lower level of benefits for a lower contribution rate.

Title of Bill: Ballot Initiative-Measure B

Date Enacted: 6/5/2012

Basis of Lawsuit: The state court lawsuits, which have been consolidated, make a variety of claims under the California Constitution and California labor and employment laws.

Pending Developments: The city voluntarily dismissed its own lawsuit on October 1, 2012, because a separate federal declaratory judgment would not have precluded the state court from issuing a judgment on state law grounds. The state court is set for a trial on June 17, 2013. In the meantime, the California Public Employment Relations Board issued complaints against San Jose on March 13, 2013, alleging unfair labor practices.

MARIN COUNTY

REFERENCE DOCUMENTS:

MCERA Policy Paper

Marin Association of Public Employees v. Marin County Employees' Retirement Association

NO. CIV 1300318

Marin County Superior Court
Filed 1/18/2013

Type of Pension Reform: Restricted final pay to wages and excluded in-kind payments and overtime.

Title of Bill: California AB 197, followed by local pension board vote on 12/18/2012.

Date Enacted: 9/12/2012

Basis of Lawsuit: Violation of U.S. and California Contracts Clauses.

CONTRA COSTA

Contra Costa Deputy Sherriffs Association v. Contra Costa County Employees Retirement Association

NO. N12-1870

Contra Costa County Superior Court

California

Judge David Flinn
Filed 11/27/2012

REFERENCE DOCUMENTS:

- Petition
- Stay Order
- Sherriffs Complaint

Type of Pension Reform: Restricted final pay to wages and excluded in-kind payments and overtime.

Title of Bill: California AB 197

Date Enacted: 9/12/2012, followed by local pension board vote on 10/30/2012.

Basis of Lawsuit: Violation of U.S. and California Contracts Clauses.

Date of Initial Opinion: 11/29/2012

Outcome of Initial Opinion: Stay of new law while case is litigated

ALAMEDA

REFERENCE DOCUMENTS:

- Stay Order

Alameda County Deputy Sherriffs' Association v. Alameda County Employees' Retirement Association

NO. RG12658890

Alameda County Superior Court
Judge Evelio M. Grillo
Filed 12/6/2012

Type of Pension Reform: Restricted final pay to wages and excluded in-kind payments and overtime.

Title of Bill: California AB 197

Date Enacted: 9/12/2012

Basis of Lawsuit: Violation of U.S. and California Contracts Clauses.

MERCED

AFSCME, Municipal Employees Local 2703, and Merced County Sheriffs Employees Association v. Merced County Employees Retirement System

NO. CV003073

Merced County Superior Court
Judge Ronald Hansen
Filed 12/7/2012

Type of Pension Reform: Restricted final pay to wages and excluded in-kind payments and overtime.

Title of Bill: California AB 197

Date Enacted: 9/12/2012

Basis of Lawsuit: Violation of U.S. and California Contracts Clauses.

Date of Initial Opinion: 12/1/2012

Outcome of Initial Opinion: Preliminary injunction ordering pension system not to implement the state law until the lawsuit is over.

Colorado

Justus v. State of Colorado

NO. 2010-CV-1589

2nd Judicial District Court, Denver County District
Judge Robert S. Hyatt.
Filed 11/19/2010

REFERENCE DOCUMENTS:

- Court Order
- Notice of Appeal
- Appellate Opinion
- Court Decision

Type of Pension Reform: Reduced cost-of-living adjustment for current retirees.

Title of Bill: SB 10-001

Date Enacted: 2/23/2010

Basis of Lawsuit: Plaintiffs alleged that the cost-of-living adjustments reduction violated the U.S. Constitution's Contracts Clause, Takings Clause, and Due Process Clause.

Date of Initial Opinion: 6/29/2011

Outcome of Initial Opinion: Grant of summary judgment to the state of Colorado and rejection of plaintiffs' claims.

Reasoning: "Plaintiffs concede that Colorado requires a clear intent to create an enforceable contract right and yet, the various Public Employees Retirement Association (PERA) and DPS COLA provisions contain no durational language of any kind or language suggesting that a contract has been created...None of the PERA or DPS COLA provisions over that 40 years contain language establishing a lifetime right to any particular COLA formula at retirement and no ambiguity exists as to the legislature's ability to constantly modify the COLA provisions for existing retirees." (Court Decision).[5]

Date of Appellate Opinion: 10/11/2012

Outcome of Appeal: Reversed and remanded.

Reasoning: The appellate court reasoned that plaintiffs do have a contractual right to some cost-of-living adjustments, but the lower court must determine whether the impairment is substantial, and if so, whether the reduction was necessary to serve a significant public purpose.

Pending Developments: Plaintiffs have filed an appeal to the Colorado Supreme Court.

5 See www.saveperacola.com/resources/.

Florida

Williams v. Scott

NO. 2011-CA-1584

Circuit Court of the 2nd Judicial Circuit, Leon County
Judge Jackie L. Fulford
Filed 6/20/2011

REFERENCE DOCUMENTS:

- Complaint
- Summary Judgment Ruling
- Supreme Court Decision

Type of Pension Reform: Increased contribution for employees and cost-of-living adjustment suspension.

Title of Bill: SB 2100

Date Enacted: 5/26/2011

Basis of Lawsuit: Plaintiffs challenged a new 3 percent employee contribution, and a reduction in cost-of-living adjustments earned for new service. The complaint alleged violations of the state constitution's Contracts Clause, Takings Clause, and the right to collectively bargain.

Date of Initial Opinion: 3/6/2012

Outcome of Initial Opinion: The new employee contribution and cost-of-living adjustments elimination are unconstitutional. Defendants must reimburse Florida Retirement System (FRS) participants for any funds withheld from them.

Reasoning: "The changes at issue here...are qualitative changes to the plan...FRS members have had continous, unconditional rights to a noncontributory plan with a cost-of-living adjustments since the inception of FRS; these elements are not related to future state service...this court is bound to follow the express language of section 121.011 (3)(d), Florida Statutes. This provision cannot be read as allowing the legislature to redefine established, unconditional contractual rights...as suddenly tied to Years of Service and thereby altogether eliminated in the future. Such a reading would render the express contract...wholly illusory." (Summary Judgment Ruling).

Pending Developments: Hearing before the Florida Supreme Court ocurred September 7, 2012. Decision expected December 2012. The Florida Supreme Court docket is No.SC12-520.[6]

Date of Appellate Opinion: 1/17/13

Outcome of Appeal: Reversed.

Reasoning: Under established Florida Supreme Court precedent, the legis-

6 See www.jweb.flcourts.org/pls/docket/ds_docket?p_caseyear=2012&p_casenumber=520&psCourt=FSC&psSearchType=.

Florida

lature is allowed to alter retirement benefits prospectively. "To hold otherwise would mean that no future legislature could in any way alter future benefits of active employees for future services, except in a manner favorable to the employee. This view would, in effect, impose on the state the permanent responsibility for maintaining a retirement plan which could never be amended or repealed irrespective of the fiscal condition of this state. Such a decision could lead to fiscal irresponsibility. It would also impose on state employees an inflexible plan which would prohibit the legislature from modifying the plan in a way that would be beneficial to a majority of employees, but would not be beneficial to a minority." Moreover, the amendments increasing employee contributions to the FRS did not impair collective bargaining rights.

MIAMI

REFERENCE DOCUMENTS:

Amended Complaint

Fraternal Order of Police, Miami Lodge 20 v. City of Miami

NO. 10-47918-CA-13.

Eleventh Judicial Circuit, Miami-Dade County
Judge Gerald Trawick
Filed 9/1/2010

Type of Pension Reform: Reduced pension rights.

Title of Bill: Ordinance 10-10901

Date Enacted: 8/31/2010

Basis of Lawsuit: The plaintiffs are not challenging the pension ordinance directly, but rather the Florida Statute (§447.4095) giving the city authority to declare a "financial urgency" that creates an "impasse" for collective bargaining purposes. The plaintiffs allege that this statute violates various Florida constitutional provisions on collective bargaining rights, due process, equal protection, contracts, and is unconstitutionally vague as well.

MIAMI BEACH

REFERENCE DOCUMENTS:

Appellate Opinion

City of Miami Beach v. Board of Trustees of the City Pension Fund for Firefighters and Police Officers in the City of Miami Beach

NO. 3D11-2974.

Miami-Dade County Circuit Court
Filed 11/17/2011

Type of Pension Reform: Lowered future accruals and raised retirement age.

Title of Bill: Not Applicable

Florida

Date Enacted:	11/1/2010
Basis of Lawsuit:	The pension board refused to implement pension reductions adopted by the city in a collective bargaining agreement on the theory that a voter referendum was required before pension benefits could be lowered.
Date of Initial Opinion:	8/5/2011
Outcome of Initial Opinion:	Held in favor of pension board.
Reasoning:	Florida statutes require that changes to laws affecting municipal employees be submitted to a referendum of the voters.
Date of Appellate Opinion:	6/27/2012
Outcome of Appeal:	The Third District Court of Appeals, Docket no. 3D11-2974, held in favor of the city.
Reasoning:	State constitution protects collective bargaining. To require the submission of collective bargaining agreements to voter referendum would undermine this right.

Idaho

Idaho Education Association v. State of Idaho

NO. CVOC-1108212.

Fourth Judicial District, County of Ada
Judge Timothy Hansen
Filed 4/27/2011

REFERENCE DOCUMENTS:

Complaint

Decision and Order

Type of Pension Reform: Repealed early retirement incentive for teachers and held that all collective bargaining agreements would expire on June 30, 2011.

Title of Bill: SB 1108

Date Enacted: 3/17/2011

Basis of Lawsuit: Plaintiffs alleged that the restrictions violated the Idaho Constitution's Contracts Clause and single-subject rule.

Date of Initial Opinion: 9/28/2011

Outcome of Initial Opinion: Grant of summary judgment to the State of Idaho.

Reasoning: The provisions all were related directly or indirectly to the same subject: employment of teachers. As for the Contracts Clause: the mere availability of a "one-time incentive" for early retirement did not show "legislative intent to create a contractual right enforceable against the State."

The nullification of all collective bargaining agreements (in a separate section) did impair contracts as an initial matter, but the impairment was justified by important public purposes: creating efficiency and accountability within Idaho's public school system, returning power to local school boards, helping to maintain a "uniform and thorough system of free public education." (Decision and Order).

Illinois

Carmichael v. Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago

NO. NOT AVAILABLE

Cook County Circuit Court, Chancery Division
Filed 10/9/2012

REFERENCE DOCUMENTS:

Plaintiff Complaint

Type of Pension Reform:	Limited the ability of state employees to take a leave of absence to work for a labor union but to then receive a higher pension based on the union salary rather than the public employment salary.
Title of Bill:	HB 3813
Date Enacted:	1/5/2012
Basis of Lawsuit:	Violation of Illinois Pension Benefits Clause.
Pending Developments:	The case is ongoing.

Louisiana

Retired State Employees Association vs. State of Louisiana

NO. 614675

19th Judicial District Court, Baton Rouge
Judge William Morvant
Filed 8/16/2012

REFERENCE DOCUMENTS:

Complaint

Type of Pension Reform:	Established a cash balance plan for new employees.
Title of Bill:	HB 61
Date Enacted:	6/5/2012
Basis of Lawsuit:	The plaintiffs alleged that the Legislature failed to have an actuarial valuation, improperly charges existing members for transition costs to the new system, and failed to be passed by a two-thirds majority, all in violation of the state constitution.
Date of Initial Opinion:	1/25/2013
Outcome of Initial Opinion:	Legislation was struck down.
Reasoning:	Based on actuarial testimony that the new cash balance plan would involve extra costs on the state's part, the judge held that the enactment violated a provision of the Louisiana Constitution requiring a two-thirds vote in such cases rather than a simple majority.

Maine

Maine Association of Retirees v. Board of Trustees of the Maine Public Employee Retirement System

NO. 1:12-CV-00059

United States District Court for the District of Maine
Judge Nancy Torresen
Filed 2/13/2012

REFERENCE DOCUMENTS:

- Complaint
- Motion to Dismiss
- Opposition Motion to Dismiss

Type of Pension Reform: Reduced cost-of-living adjustments.

Title of Bill: LD 1043

Date Enacted: 6/20/2011

Basis of Lawsuit: Plaintiffs alleged that the cost-of-living adjustments reduction violated the U.S. Constitution's Contracts Clause and Takings Clause.

Pending Developments: As of an October 24, 2012 scheduling order, discovery will be completed by March 27, 2013, and the expected trial date is August 5, 2013. The defendants filed a motion to dismiss on February 7, 2013, which is still pending.

Maryland

BALTIMORE

Cherry, Jr. v. Mayor and City Council of Baltimore City

NO. 1:10-CV-01447.

United States District Court for the District of Maryland
Judge Marvin J. Garbis
Filed 6/3/2010

REFERENCE DOCUMENTS:

Court Decision

Court Decision on Substantial Impairment

Type of Pension Reform: Reduced cost-of-living adjustments.

Title of Bill: City Ordinance 100-306

Date Enacted: 6/10/2010

Basis of Lawsuit: Plaintiff alleged that the new law violated the U.S. Contracts Clause.

Date of Initial Opinion: 9/6/2011

Outcome of Initial Opinion: The elimination of future "variable benefit" increases (by which employees shared in investment returns that were above expectations) was a "substantial impairment" in some cases. Moreover, this was not a reasonable and necessary way to serve an important public purpose.

Reasoning:

The September 6, 2011 decision:

The Court did not find an actual Contracts Clause violation yet. Its only holding was about whether a "substantial impairment" had occurred, not whether the impairment was justified.

The Court's holding was in three parts: 1) Plaintiffs who had retired were eligible to keep receiving new variable benefit increases in accordance with the terms of their pension plans; 2) plaintiffs who were eligible to retire but were still working could receive variable benefit increases based on past service, but not new variable benefit increases; 3) plaintiffs who were not yet eligible to retire had not suffered any impairment at all.

The September 20, 2012 decision:

This decision considered whether the impairment was "reasonable and necessary to serve an important public purpose."

The Court said that ensuring financial stability is indeed an "important public purpose." But reducing the variable benefit in such a fashion was not "necessary"; that is, the "impairment far more drastically impaired the contractual rights of some Plan members than others while a perfectly evident, more moderate and even-handed course would have served its purposes equally well." (pp. 27-28). The Court said that the "choice to use the Tiered COLA instead of an equally applied COLA of something less than 2 percent, takes substantially

Maryland

from beneficiaries under 65 years of age on the effective date of the Ordinance to give more to the beneficiaries who were age 65 or more at that time." Thus, the Court struck down the legislation.

In November and December 2012, a series of orders resolved the remaining issues: state law claims regarding breach of contract and fiduciary duties, breach of the Takings Clause, and severability. A December 28, 2012 final judgment order was then issued.

Pending Developments: The city filed a notice of appeal on December 28, 2012, and the unions filed their notices of cross-appeal on January 25, 2013.

Massachusetts

Boston Police Superior Officers Federation v. Patrick

NO. 1:09-CV-11137

United States District Court for the District of Massachusetts
Judge Nathaniel M. Gorton
Filed 7/2/2009

REFERENCE DOCUMENTS:

Complaint

Type of Pension Reform:	Redefined of earnable compensation to prevent benefit spiking.
Title of Bill:	SB 2079
Date Enacted:	6/16/2009
Basis of Lawsuit:	Plaintiffs alleged that the new law violated state and U.S. Contracts clauses.
Date of Initial Opinion:	Not Applicable
Outcome of Initial Opinion:	Not Applicable
Reasoning:	In 2010, the Massachusetts state supreme court issued a ruling holding that certain extra allowances were not part of base compensation in the first place. The parties ultimately agreed to dismiss the lawsuit on May 26, 2011.

Michigan

Michigan Coalition of State Employee Unions v. State of Michigan

NO. 12-117-MM

State of Michigan Court of Claims
Judge Joyce Draganchuk
Filed 2/13/2012

REFERENCE DOCUMENTS:

- Complaint
- Appellate Order
- Opinion from Court of Claims

Type of Pension Reform: Raised contribution rate for employees who don't switch to 401(k) plan, replaced retiree health insurance for new employees with a 401(k)-style plan, using six-year average of overtime pay to calculate benefits.

Title of Bill: HB 4701

Date Enacted: 12/15/2011

Basis of Lawsuit: Violation of Article XI, Section 5 of the Michigan Constitution for enacting benefit changes without approval or consent from the Michigan Civil Service Commission.

Date of Initial Opinion: 9/25/2012

Outcome of Initial Opinion: Grant of summary judgment to plaintiffs.

Reasoning: The Michigan Constitution specifies that the Civil Service Commission has power to "fix rates of compensation for all classes of positions . . . and regulate all conditions of employment." Court therefore agreed with plaintiffs that the "Legislature can neither regulate the conditions of employment in the classified civil service nor fix rates of compensation." Moreover, in a recent case, the Michigan Court of Appeals struck down a 3 percent contribution to retiree health care on precisely these grounds (AFSCME Council 25 v. State Employees Ret. Sys., 294 Mich. App. 1 (2011)).

Not Available

NO. NOT AVAILABLE

30th Judicial Circuit, Ingham County
Judge Rosemaria Aquilina
Filed 9/4/2012

Type of Pension Reform: Required public school employees to select among the following: increase employee contributions, accept a lesser pension, or freeze their defined benefit pension and switch to a defined contribution plan for future accruals.

Title of Bill: SB 1040

Date Enacted: 9/4/2012

Michigan

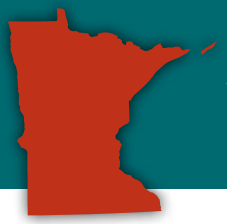
Date of Initial Opinion: 9/4/2012

Outcome of Initial Opinion: On September 4, 2012, the day of enactment, the judge was reported to have granted a temporary restraining order in two lawsuits filed by the Michigan Education Association and by American Federation of Teachers/Michigan, respectively.[7]

Pending Developments: On September 26, 2012, the Michigan Court of Appeals granted a motion for an expedited appeal of the lower court's temporary restraining orders and set a briefing schedule to be completed within 56 days of the order.

7 See www.mea.org/mea-aft-score-wins-against-sb-1040

Minnesota



Swanson v. State of Minnesota

NO. 62-CV-10-05285.

Second Judicial District Court, Ramsey County
Judge Gregg Johnson
Filed 7/2/2010

REFERENCE DOCUMENTS:

Complaint

Court Opinion

Type of Pension Reform: Reduced cost-of-living adjustments.

Title of Bill: SF 2918

Date Enacted: 5/22/2009 for 2009 legislation and 5/10/2010 for 2010 legislation

Basis of Lawsuit: Plaintiffs alleged that cost-of-living adjustment reductions violated the state and U.S. Constitution's Contracts clauses and Takings clauses.

Date of Initial Opinion: 6/29/2011

Outcome of Initial Opinion: Grant of summary judgment to the state of Minnesota and rejection of plaintiffs' claims.

Reasoning: "First, statutes are not contracts absent plain and unambigous terms that show an intent to contract. To decide otherwise risks a serious intrusion into the Legislature's policymaking authority... In the end, the balance achieved fully preserved retirees' pension annuities, provided for annual adjustments to those annuitites, and stabilized the financial deterioration that threatened Minnesota's public pension Plans. There is no legal or equitable reason for the judiciary to interfere with this legislative policy decision... Finally, Plaintiffs' claims fail because they rest on a fundamental disagreement with the Legislature's policy choices...this is not a debate for the Court to join...the Court would threaten the balance of powers between the legislative and judicial branches by second-guessing this legislative wisdom." (Court Opinion).

Pending Developments: No appeal has been filed.[8]

8 See www.macsnc.courts.state.mn.us/ctrack/publicLogin.jsp

New Hampshire

American Federation of Teachers v. State of New Hampshire

NO. 09-E-0290

State of New Hampshire, Merrimack County Superior Court
Judge Larry M. Smukler
Filed 8/1/2009

REFERENCE DOCUMENTS:

Amended Complaint

Decision

Type of Pension Reform: Recalculated cost-of-living adjustments and redefined compensation.

Title of Bill: HB 653 and HB 1645

Date Enacted: 6/29/2007 and 6/30/2008

Basis of Lawsuit: Plaintiffs alleged that the law violated the U.S. Constitution's Contracts Clause, Takings Clause, and Due Process Clause, and the state constitution's Contracts Clause.

Date of Initial Opinion: 7/30/2012

Outcome of Initial Opinion: The parties jointly moved for an interlocutory transfer without ruling, based on the fact that the same court's ruling in the Firefighters case (No. 2011-CV-385) was dispositive.

Pending Developments: The New Hampshire Supreme Court declined the interlocutory appeal on September 26, 2012. The parties' briefs in the lower court were due on December 14, 2012. [9] Supplemental briefing is due on April 5, 2013. On March 15, 2013, the parties agreed to drop federal claims against the state officials until the New Hampshire Supreme Court rules in a similar case.

9 See www.molanmilner.com/cases_to_follow

New Hampshire

Cloutier v. State of New Hampshire

NO. 219-2009-CV-00525.

State of New Hampshire Strafford County Superior Court
Judge Kenneth C. Brown
Filed 9/14/2009

REFERENCE DOCUMENTS:

Court Decision

Supreme Court Decision

Type of Pension Reform:	Limited benefits to 75 percent of compensation at time of retirement.
Title of Bill:	HB 671
Date Enacted:	7/21/2003
Basis of Lawsuit:	The plaintiffs alleged that the limitation on retirement benefits violated the state constitution's Contracts Clause.
Date of Initial Opinion:	10/14/2010
Outcome of Initial Opinion:	Grant of plaintiffs' motion for summary judgment.
Reasoning:	"The Court finds that although the legislature's intent is unclear from the statutory language itself, the plaintiff's retirement benefits vested when they became permanent employees."..."The previous statutory scheme clearly allowed for the calculation of retirement benefits based on the most recent adjustments in judicial salaries. Thus, the plaintiffs would receive benefits calculated to include raises, COLA's and any other adjustments experienced by the judges who were active post-plaintiffs retirement date. RSA 100 C changes that calculation...the new statute bases the retired judges' benefits on the amount that they had been getting paid at the time each retired... The difference between the parties' calculations, regardless of their dollar amount, is clearly an impairment of the plaintiffs' vested rights under the previous statutory benefit." (Court Decision).[10]
Date of Appellate Opinion:	3/30/2012
Outcome of Appeal:	The New Hampshire Supreme Court upheld one aspect of the trial court's decision but reversed and remanded to reconsider the substantiality question.
Reasoning:	The New Hampshire Supreme Court agreed that pensions are contractual in nature. It disagreed, however, that the limitation here was necessarily substantial. It sent the case back to the trial court to determine "whether the contractual impairment is offset by any compensating benefits." (Court Decision).

10 See www.molanmilner.com/cases_to_follow

New Hampshire

Professional Firefighters of New Hampshire v. State of New Hampshire

NO. 217-2011-CV-385.

Superior Court of Merrimack
Judge Richard B. McNamara
Filed 6/29/2011

REFERENCE DOCUMENTS:

Complaint

Type of Pension Reform: Increased employee contribution.

Type Bill: HB 2

Date Enacted: 6/29/2011

Basis of Lawsuit: The plaintiffs alleged that the contribution-rate increase violated the U.S. and New Hampshire Contracts and Takings clauses. The plaintiffs also relied on various New Hampshire constitutional provisions, such as one requiring taxes to be "proportional and reasonable," and one requiring the use of "sound actuarial valuation and practice." (Complaint).

Date of Initial Opinion: 1/6/2012

Outcome of Initial Opinion: Dismissal, with leave to amend.

Reasoning: The plaintiffs' claim as to actuarial valuation was dismissed, as they had no economic stake in the matter. Their benefits would be paid regardless.

The plaintiffs' claim concerning unfair taxation was also dismissed because their contribution rate was a fee paid into a fund, not a tax used for general revenue.

The contribution-rate increase was a substantial violation for employees who had satisfied the 10-year vesting requirement. Nonetheless, the plaintiffs failed to allege that they had met that requirement. The Court dismissed this claim as well, with leave to amend the complaint within 30 days.

Pending Developments: Plaintiffs amended complaint on February 24, 2012, and the state moved to dismiss on March 22, 2012. Then, on July 24, 2012, the parties all jointly filed an interlocutory appeal with the New Hampshire Supreme Court. That appeal was denied. At the lower court, the parties had a "case structuring conference" on January 17, 2013, to set dates for discovery and other matters.[11] Dates are set as follows: April 30, 2013 cross motions due on all claims; May 31, 2013 objections to cross motions due; and July 1, 2013 oral argument on cross motions.

11 See www.molanmilner.com/cases_to_follow

New Hampshire

Professional Firefighters of New Hampshire v. State of New Hampshire

NO. 216-2012-CV-00193

Superior Court of Hillsborough
Judge Gillian L. Abramson
Filed 2/29/2012

REFERENCE DOCUMENTS:

Court Decision

Type of Pension Reform:	Limited earnable compensation by excluding vacation and sick pay, increasing final average salary calculation period to five years, lowering the maximum benefit, increasing age requirement, reducing the multiplier from 2.5 percent to 2.1 percent, and repealing an accidental disability exception.
Type of Bill:	HB 2
Date Enacted:	6/29/2011
Basis of Lawsuit:	U.S. and New Hampshire Contracts and Takings clauses.
Date of Initial Opinion:	9/25/2012
Outcome of Initial Opinion:	The judge transferred the case to the New Hampshire Supreme Court for an interlocutory appeal.
Reasoning:	Similar cases are pending before the New Hampshire Supreme Court.
Pending Developments:	With the lower court's approval, the parties filed an interlocutory appeal with the New Hampshire Supreme Court on December 10, 2012,[12] which was declined on January 9, 2013. Parties are scheduled for a status conference on April 16, 2013.

12 See www.molanmilner.com/cases_to_follow

New Jersey

DePascale v. State of New Jersey

NO. NOT AVAILABLE

Superior Court, Mercer County
Judge Linda Feinberg
Filed 7/21/2011

REFERENCE DOCUMENTS:

Court Brief

Supreme Court Syllabus

Type of Pension Reform:	Increased contribution rates for judges.
Title of Bill:	S 2937
Date Enacted:	6/28/2011
Basis of Lawsuit:	Requiring higher contributions from sitting judges was unconstitutional.
Date of Initial Opinion:	10/26/2011
Outcome of Initial Opinion:	Judge ruled that state judges do not have to pay higher contribution rates.[13]
Reasoning:	State constitution prevents judges from having their salaries diminished while in office.
Date of Appellate Opinion:	7/24/2012
Outcome of Appeal:	In Docket 69,401, the New Jersey Supreme Court issued a ruling striking down pension reform as applied to judges.
Reasoning:	The constitution prohibits the Legislature from diminishing the salaries of judges not other public employees. Increasing contribution rates for judges would essentially diminish their salaries by up to $17,000 a year, and this is unconstitutional.

New Jersey Education Association v. State

NO. 11-5024

United States District Court for the District of New Jersey
Judge Anne E. Thompson
Filed 8/31/2011

REFERENCE DOCUMENTS:

Court Opinion

Type of Pension Reform:	Reduced cost-of-living adjustment and increased employee contribution rate.
Title of Bill:	S 2937
Date Enacted:	6/28/2011
Basis of Lawsuit:	U.S. Contracts Clause.

13 See www.nj.com/news/index.ssf/2011/10/judge_nixes_christie_request_t.html.

New Jersey

Date of Initial Opinion: 3/5/2012

Outcome of Initial Opinion: Dismissal of lawsuit.

Reasoning: The Court held that because the plaintiffs were asking for a return of contributions, their complaint violated the U.S. Constitution's 11th Amendment, which has been interpreted by the Supreme Court to disallow lawsuits against state governments for retrospective money damages.

Pending Developments: Plaintiffs filed a state court lawsuit based on the same claims, on March 29, 2012 (see below).

Berg v. Christie

NO. MER-L-2996-11.

Superior Court, Mercer County
Judge Hurd
Filed 12/2/2011

REFERENCE DOCUMENTS:

State Brief

Type of Pension Reform: Reduced cost-of-living adjustment.

Title of Bill: S 2937

Date Enacted: 6/28/2011

Basis of Lawsuit: Breach of contract, violation of the state Contracts Clause and due process, violation of the New Jersey Civil Rights Act.

Date of Initial Opinion: 5/29/2012

Outcome of Initial Opinion: Judge made an oral decision that plaintiffs are not entitled to cost-of-living adjustments on retirement.[14]

Pending Developments: New Jersey unions plan to appeal.[15]

14 See www.nj.com/hudson/voices/index.ssf/2012/05/daily_poll_should_retired_publ.html. The entire hearing is available via YouTube at http://www.youtube.com/watch?v=R8SDi5uIqhU&feature=youtu.be

15 See www.nj.com/hudson/voices/index.ssf/2012/05/daily_poll_should_retired_publ.html

New Jersey

New Jersey Education Association v. State

NO. MER-L-771-12

Superior Court, Mercer County
Judge Mary Jacobson
Filed 3/29/2012

REFERENCE DOCUMENTS:

Complaint

Type of Pension Reform:	Increased contribution for employees and impairment of retiree medical benefits.
Title of Bill:	S 2937
Date Enacted:	6/28/2011
Pending Developments:	Case is still pending. Union plaintiffs withdrew cost-of-living adjustment complaints from this case and joined those complaints in the separate *Berg* case.

New Mexico

AFSCME v. State of New Mexico

NO. CV-2009-7148.

Second Judicial District Court, County of Bernalillo
Filed 6/15/2009

REFERENCE DOCUMENTS:

Complaint

Type of Pension Reform: Increased contribution rate.

Title of Bill: HB 854

Date Enacted: 4/7/2009

Basis of Lawsuit: Plaintiff argued that increases in employee contributions and reductions in employers' contributions are unconstitutional as they violate Article XX, §22 (A) of the New Mexico Constitution by modifiying benefits for the purpose of funding the State budget and not enhancing or preserving the actuarial soundness of the retirement plans. Plaintiffs argued impairment of contract, undue taxation, and property right in vested benefits.

Ohio

CINCINNATTI

Sunyak v. City of Cincinnati, NO. 11-CV-445 consolidated with Harmon et al. v. City of Cincinnati, NO. 1:12-CV-329

U.S. District Court for the Southern District of Ohio
Judge Michael R. Barrett
Filed 7/1/2011

REFERENCE DOCUMENTS:

Complaint

Class Action Complaint (Harmon)

Type of Pension Reform: Increased retirement age to 60, put multiplier at 2.2 percent or 2.0 percent for service after 30 years; and lowered cost-of-living adjustment to 2 percent.

Title of Bill: Ordinance No. 84-2011

Date Enacted: 3/16/2011

Basis of Lawsuit: Plaintiffs contended the changes violated the U.S. Contracts Clause, substantive due process, procedural due process, the Takings Clause, the Ohio Contracts Clause, and Ohio common law causes of action for breach of contract and breach of fiduciary duty.

Pending Developments: Consolidated Amended Complaint due by October 1, 2012. Discovery due by March 1, 2013. Motions due by April 1, 2013. Final Pretrial Conference September 2013. Jury Trial October 2013.

CINCINNATTI

Bock v. City of Cincinnati

NO. A-1105049

Hamilton County Court of Common Pleas
Filed 6/1/2011

Type of Pension Reform: Increased retirement age to 60, put multiplier at 2.2 percent or 2.0 percent for service after 30 years; lowered cost-of-living adjustment to 2 percent.

Title of Bill: Not Applicable

Date Enacted: 3/16/2011

Basis of Lawsuit: Plaintiffs contended the changes violated the Contracts Clause.

Pending Developments: No substantive motions have been filed and no trial has been scheduled.[16]

16 The docket for this case is available at www.courtclerk.org/case_summary.asp?sec=history&casenumber=A%201105049

Rhode Island

Rhode Island Council 94 v. Carcieri

NO. PC 10-2859

State of Rhode Island, Providence Superior Court
Judge Sarah Taft-Carter
Filed 5/12/2010

REFERENCE DOCUMENTS:

Court Decision

Type of Pension Reform:	Retirement age, years of service, final average salary, and cost-of-living adjustments.
Title of Bill:	HB 7397
Date Enacted:	6/30/2009
Basis of Lawsuit:	Plaintiffs alleged the pension legislation violated the Rhode Island Constitution's Contracts Clause and Takings Clause.
Date of Initial Opinion:	9/13/2011
Outcome of Initial Opinion:	Denial of Rhode Island's motion for summary judgment, allowing the lawsuit to proceed further on the merits.
Reasoning:	The Court rejected Rhode Island's apparent argument that it retained the right to reduce or eliminate pension benefits up to the date of retirement. Instead, the Court found that the Rhode Island pension system did create contractual rights, on the ground that 10 years of contributory service service is substantial consideration. The Court was careful to note that its holding did not say anything about whether the pension legislation actually impaired the contractual right to a pension, but was merely about whether the pension was contractual in the first place.
Pending Developments:	A trial will likely take place later in 2012.[17]
Date of Appellate Opinion:	11/22/2011
Outcome of Appeal:	The Rhode Island Supreme Court denied the state's request for an immediate appeal of the initial decision, thus allowing the Court to go forward with a trial.
Reasoning:	The Court finds that the Employees' Retirement System of the State of Rhode Island does give rise to an implied contract and the rights and obligations incident thereto (Decision).

17 See www.ricouncil94.org/NewsEvents/StatePensionLitigationUpdate/tabid/213/Default.aspx

Rhode Island

FIVE LAWSUITS:

REFERENCE DOCUMENTS:

Complaint

Motion to Consolidate

Motion for Temporary Restraining Order

Woonsocket Firefighters, IAFF Local 732, AFL-CIO v. Chafee, C.A.

NO. PC 12-3579

Bristol/Warren Regional School Employees v. Chafee, C.A.

NO. 12-3167

Rhode Island Council 94, AFSCME, AFL-CIO Locals: Boys & Girls Training School, Local 314 v. Chafee, C.A.

NO. 12-3168

City of Cranston Police Officers, International Brotherhood of Police Officers, Local 301, AFL-CIO v. Chafee, C.A.

NO. 12-3169

Rhode Island Public Employees' Retiree Coalition et al. v. Chafee, C.A.

NO. PC 12-3166

Rhode Island Superior Court
Judge Sarah Taft-Carter
Filed 6/22/2012

Type of Pension Reform:	Complete overhaul: suspended cost-of-living adjustments, increased retirement age, moved current employees to hybrid plan.
Title of Bill:	SB 1111
Date Enacted:	11/18/2011
Date of Initial Opinion:	Temporary restraining order denied on 6/22/2012 (date lawsuit was filed).
Pending Developments:	After a hearing on December 7, 2012, the judge sent the cases to mediation with a report from the parties due on February 1, 2013. As of April 9, 2013, no reports have been filed by the parties, but the judge has scheduled a status conference for April 22, 2013.

South Dakota

Tice v. State of South Dakota

NO. 10-225

Circuit Court of the Sixth Judicial Circuit in Hughes County
Judge Mark Barnett
Filed 6/11/2010

REFERENCE DOCUMENTS:

Complaint

Memorandum Decision

Type of Pension Reform: Reduced cost-of-living adjustment for future and current retirees.

Title of Bill: SB 20

Date Enacted: 3/12/2010

Basis of Lawsuit: Plaintiffs argued that a reduction in the cost-of-living adjustment violated the state and federal Contracts clauses and the federal Takings Clause.

Date of Initial Opinion: 4/11/2012

Outcome of Initial Opinion: State of South Dakota received a grant of summary judgment, and plaintiff's claims were rejected.

Reasoning: "There is no written contract between Plaintiff and Defendants that sets forth the terms, responsibilities, or respective contract rights between the parties. Additionally, no provision within the South Dakota Constitution has been cited by the Plaintiff which would create a constitutional entitlement to any particular cost-of-living adjustment... if the Legislature has been unwilling to forfeit control of cost-of-living adjustments to the South Dakota Retirement System...it is hard for this court to conceive that the Legislature would at the same time forfeit control of a cost-of-living adjustment, entirely, for the lifetimes of one class of beneficiaries." (Memorandum Decision).

Tennessee

TENNESSEE VALLEY AUTHORITY

Duncan v. Tennessee Valley Authority Retirement System

NO. 3:10-0217

United States District Court for the Middle District of Tennessee
Judge Aleta A. Trauger
Filed 3/5/2010

REFERENCE DOCUMENTS:

Complaint

Court Order

Type of Pension Reform: Reduced cost-of-living adjustment for future and current retirees.

Title of Bill: Not Applicable

Date Enacted: 8/17/2009

Basis of Lawsuit: Plaintiffs initially argued that the cost-of-living adjustment reduction violated the federal Contracts Clause and the federal Takings Clause but later withdrew those claims. Plaintiffs additionally argued that the cost-of-living adjustment reduction was a breach of contract under generic contract law, and that the pension board violated fiduciary duties under trust law.

Date of Initial Opinion: 9/7/2010

Outcome of Initial Opinion: Dismissal of plaintiffs' claims without prejudice, thus allowing plaintiffs to file a new complaint.

Reasoning: The plaintiffs had withdrawn their constitutional arguments and were relying most heavily on the argument that the board violated fiduciary duties. The court held that the plaintiffs had not produced evidence (at least not yet) that the board had fiduciary duties that would preclude taking Tennessee Valley Authority's finances into account.

Pending Developments: The plaintiffs and defendents filed a joint mediation report on April 20, 2012, announcing that they intended to settle the case via mediation.

Texas

City of Fort Worth v. Employees' Retirement Fund of the City of Fort Worth

NO. 342-262392-12

District Court of Terrant County, 342nd Judicial District

Judge John McBryde

Filed 10/23/2012

REFERENCE DOCUMENTS:

- Ordinance
- Complaint
- Motion to Dismiss
- Federal Court Remand Order

Type of Pension Reform: Reduced multiplier for future years, changed cost-of-living adjustment calculation for future years, raised number of years used for final average salary, and eliminated overtime for that purpose to prevent spiking.

Title of Bill: Ordinance 20471-10-2012

Date Enacted: 10/23/2012

Basis of Lawsuit: City is seeking a declaratory judgment that the pension reform bill is lawful.[18]

Date of Initial Opinion: 2/21/2013

Outcome of Initial Opinion: Federal court returned case to State court.

Reasoning: The court found that it has no "...subject matter jurisdiction over this action. The court has not been persuaded that the action pleaded by City requires resolution of any federal issue, much less a substantial one" (Federal court remand order).

Van Houten, Jr. v. City of Fort Worth

NO. 4:12-CV-00826-Y

U.S. District Court for the Northern District of Texas

Judge Terry R. Means

Filed 11/19/2012

REFERENCE DOCUMENTS:

- Status Report

Type of Pension Reform: Reduced multiplier for future years, changed cost-of-living adjustment calculation for future years, raised number of years used for final average salary, and eliminated overtime for that purpose to prevent spiking.

Title of Bill: Ordinance 20471-10-2012

Date Enacted: 10/23/2012

Basis of Lawsuit: Plaintiffs argued that the Fort Worth pension reform ordinance violates the U.S. Constitution's Contracts Clause, Takings Clause, and substantive due process. In addition, they alleged violations of the Texas Constitution's pension clause, contracts clause, and takings clause.

18 See www.star-telegram.com/2012/10/23/4358587/fort-worth-city-council-approves.html

Washington

Retired Public Employees Council of Washington and Jorgenson v. State of Washington Consolidated cost-of-living adjustment litigation

MASTER CAUSE NO. 11-2-02213-4

Thurston County Superior Court
Filed 12/16/2011

REFERENCE DOCUMENTS:

Consolidated Ruling

Opinion

Type of Pension Reform: Eliminated cost-of-living adjustment.

Title of Bill: HB 2021

Date Enacted: 5/16/2011

Basis of Lawsuit: Plaintiffs argued that the cost-of-living adjustment elimination violations the state Due Process and Contracts clauses.[19]

Pending Developments: Summary Judgment hearing is scheduled for June 28, 2012. A ruling would issue some time after the hearing.

Date of Initial Opinion: 11/9/2012

Outcome of Initial Opinion: Grant of summary judgment to employees.

Reasoning: Washington Supreme Court precedent prevents state governments from unilaterally taking away cost-of-living adjustments.

19 See www.wfse.org/?zone=/unionactive/view_article.cfm&HomeID=220852&page=Legal

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Berg v. Christie, No. MER-L-2996-11 (Mercer County Superior Court, N.J. 2011).

Bock v. City of Cincinnati, No. A-1105049 (Hamilton County Court of Common Pleas, Ohio 2011).

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City of San Jose v. San Jose Police Officers' Association, No. 12-cv-02904 (N.D. Cal. 2012).

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Cloutier v. State of New Hampshire, No. 2010-714 (N.H. 2011).

DePascale v. State of New Jersey, No. 69,401 (Supreme Court, N.J. 2012).

Duncan v. Tennessee Valley Authority Retirement System, No. 3:10-CV-217 (M.D. Tenn. 2010).

Fields v. Elected Official Retirement Plan of the State of Arizona, No. CV-2011-017443 (Maricopa County Superior Court, Ariz. 2012).

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Tice v. State of South Dakota, Civil No. 10-225 (6th Judicial Circuit, Hughes County, S.D. 2010).

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Van Houten v. City of Fort Worth, No. 4:12-cv-00826-Y (N. D. Texas 2012).

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