

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,<sup>1</sup> 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.<sup>2</sup>

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.

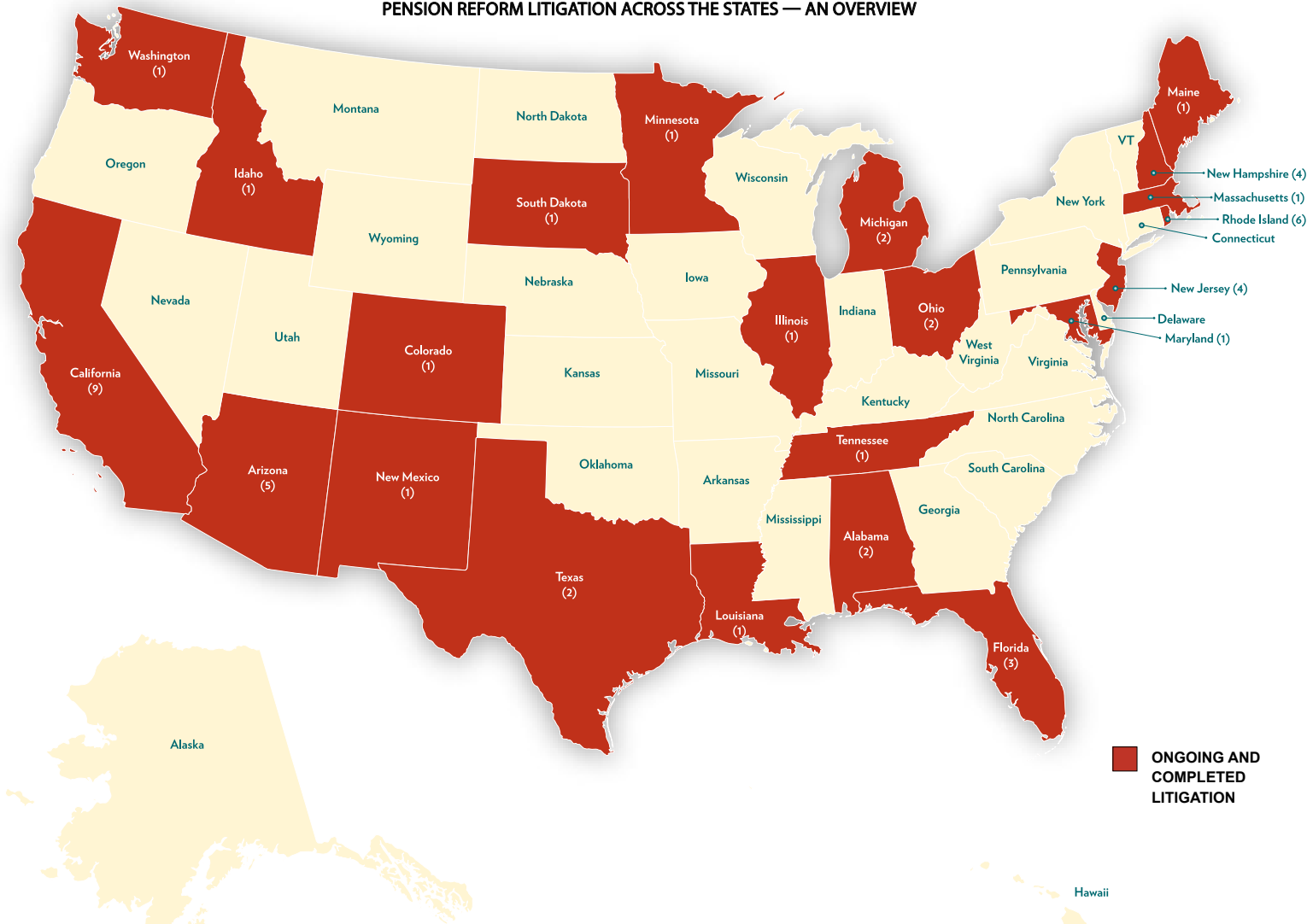
1 Pew Center on the States. (2012). *The Widening Gap: the great recession's impact on state pension and retiree health care costs*. Washington, DC.

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 51 lawsuits that were filed or that were the subject of a court decision between 2009 and January 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.<sup>3</sup> This review represents a centralized resource that monitors the lawsuits and court decisions currently challenging public pension reform.

<sup>3</sup> Where possible, we have provided links to actual court documents. Users can click on documents listed in the “Reference Document” box for each case.



## 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

<b>Type of Pension Reform:</b>	Increased employee contribution.
<b>Title of Bill:</b>	HB 414
<b>Date Enacted:</b>	6/9/2011
<b>Basis of Lawsuit:</b>	State and U.S. Contracts clauses.
<b>Date of Initial Opinion:</b>	2/23/2012
<b>Outcome of Initial Opinion:</b>	Motion to dismiss was denied.
<b>Reasoning:</b>	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.
<b>Pending Developments:</b>	The most recent scheduling order provides that dispositive motions are due by December 14, 2012.

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## Wood v. Retirement System of Alabama

NO. NOT AVAILABLE

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

<b>Type of Pension Reform:</b>	Increased contributions for state judges from 6 percent to 8.5 percent.
<b>Title of Bill:</b>	HB 414
<b>Date Enacted:</b>	6/9/2011
<b>Basis of Lawsuit:</b>	State constitution prevents reducing judges’ pay during their term of office.



## 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

<b>Type of Pension Reform:</b>	Increased employee contribution.
<b>Title of Bill:</b>	SB 1614
<b>Date Enacted:</b>	4/6/2011
<b>Basis of Lawsuit:</b>	State Contracts Clause and pension protection clause.
<b>Date of Initial Opinion:</b>	2/3/2012
<b>Outcome of Initial Opinion:</b>	Ruling in favor of plaintiffs.
<b>Reasoning:</b>	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.
<b>Pending Developments:</b>	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.

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## 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

<b>Type of Pension Reform:</b>	Reduced cost-of-living adjustment.
<b>Title of Bill:</b>	HB 1609
<b>Date Enacted:</b>	4/29/2011
<b>Basis of Lawsuit:</b>	State Contracts Clause and pension protection clause.
<b>Date of Initial Opinion:</b>	5/21/2012 and 8/30/2012
<b>Outcome of Initial Opinion:</b>	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.



**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 12, 2012, the Arizona Court of Appeals docketed an appeal with opening briefs due on December 24, 2012. The State plans to ask for the appeal to be transferred to the Arizona Supreme Court.

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## Hall v. Elected Officials’ Retirement Plan

NO. CV-2011-021234

Superior Court of Arizona, Maricopa County  
Judge John A. Buttrick  
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, and oral argument will be heard on February 11, 2013.

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## 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.

**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** Briefing on motions for summary judgment were completed on December 14, 2012.

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## 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** Court has set a hearing on summary judgment for April 26, 2013.





## 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

**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:** 6/16/2009

**Basis of Lawsuit:** Unfair labor practice.

**Pending Developments** Post-hearing briefs have been filed, and the state agency will issue an initial opinion soon.

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### 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

#### REFERENCE DOCUMENTS:

Petition for Writ of Mandate  
Minute 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:** 6/5/2012

**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

**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 initiated. 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.<sup>4</sup>

#### **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](#)  
**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.

## SAN JOSE

#### REFERENCE DOCUMENTS:

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

<sup>4</sup> See [www.cbs8.com/story/19919444/perb-drops-lawsuit-over-prop-b](http://www.cbs8.com/story/19919444/perb-drops-lawsuit-over-prop-b)



<b>Title of Bill:</b>	Ballot Initiative-Measure B
<b>Date Enacted:</b>	6/5/2012
<b>Basis of Lawsuit:</b>	The state court lawsuits, which have been consolidated, make a variety of claims under the California Constitution and California labor and employment laws.
<b>Pending Developments:</b>	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.

## Justus v. State of Colorado

NO. 2010-CV-1589

Second 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

<b>Type of Pension Reform:</b>	Reduced cost-of-living adjustment for current retirees.
<b>Title of Bill:</b>	SB 10-001
<b>Date Enacted:</b>	2/23/2010
<b>Basis of Lawsuit:</b>	Plaintiffs alleged that the cost-of-living adjustments reduction violated the U.S. Constitution's Contracts Clause, Takings Clause, and Due Process Clause.
<b>Date of Initial Opinion:</b>	6/29/2011
<b>Outcome of Initial Opinion:</b>	Grant of summary judgment to the state of Colorado and rejection of plaintiffs' claims.
<b>Reasoning:</b>	"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). <sup>5</sup>
<b>Date of Appellate Opinion:</b>	10/11/2012
<b>Outcome of Appeal:</b>	Reversed and remanded.
<b>Reasoning:</b>	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.

<sup>5</sup> See [www.saveperacola.com/resources/](http://www.saveperacola.com/resources/).



## Williams v. Scott

NO. 2011-CA-1584

Circuit Court of the Second Judicial Circuit, Leon County

Judge Jackie L. Fulford

Filed 6/20/2011

### REFERENCE DOCUMENTS:

Complaint

Summary Judgment Ruling

<b>Type of Pension Reform:</b>	Increased contribution for employees and cost-of-living adjustment suspension.
<b>Title of Bill:</b>	SB 2100
<b>Date Enacted:</b>	5/26/2011
<b>Basis of Lawsuit:</b>	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.
<b>Date of Initial Opinion:</b>	3/6/2012
<b>Outcome of Initial Opinion:</b>	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.
<b>Reasoning:</b>	"The changes at issue here...are qualitative changes to the plan...FRS members have had continuous, 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).
<b>Pending Developments:</b>	Hearing before the Florida Supreme Court occurred September 7, 2012. Decision expected December 2012. The Florida Supreme Court docket is No.SC12-520. <sup>6</sup>

<sup>6</sup> See [www.jweb.flcourts.org/pls/docket/ds\\_docket?p\\_caseyear=2012&p\\_casenum=520&psCourt=FSC&psSearchType=.](http://www.jweb.flcourts.org/pls/docket/ds_docket?p_caseyear=2012&p_casenum=520&psCourt=FSC&psSearchType=)



## MIAMI

### 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

#### REFERENCE DOCUMENTS:

Amended Complaint

**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

### 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

#### REFERENCE DOCUMENTS:

Appellate Opinion

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

**Title of Bill:** Not Applicable

**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 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).





Unknown as of yet (parties include Chicago Teachers Union, IBEW Local 9, and Laborers' Local 1001).

Cook County Circuit Court  
Filed 10/9/2012

**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



## Retired State Employees Association vs. State of Louisiana

NO. 614675

19th Judicial District Court Baton Rouge

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.



## 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

- 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.



## 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

<b>Type of Pension Reform:</b>	Reduced cost-of-living adjustments.
<b>Title of Bill:</b>	City Ordinance 100-306
<b>Date Enacted:</b>	6/10/2010
<b>Basis of Lawsuit:</b>	Plaintiff alleged that the new law violated the U.S. Contracts Clause.
<b>Date of Initial Opinion:</b>	9/6/2011
<b>Outcome of Initial Opinion:</b>	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.
<b>Reasoning:</b>	<p><b>The September 6, 2011, decision:</b></p> <p>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.</p> <p>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.</p> <p><b>The September 20, 2012, decision:</b></p> <p>This decision considered whether the impairment was “reasonable and necessary to serve an important public purpose.”</p> <p>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 cost-of-living adjustments instead of an equally applied cost-of-living adjustments of something</p>



less than 2 percent, takes substantially 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.

**Pending Developments:**

On October 24, 2012, the Court entered an order referring the case (in which state law claims remain undecided) to a magistrate judge for a settlement conference. On October 29, 2012, the city filed a memorandum asking the Court to decide various issues of severability.



## 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 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

<b>Type of Pension Reform:</b>	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.
<b>Title of Bill:</b>	HB 4701
<b>Date Enacted:</b>	12/15/2011
<b>Basis of Lawsuit:</b>	Violation of Article XI, Section 5 of the Michigan Constitution for enacting benefit changes without approval or consent from the Michigan Civil Service Commission.
<b>Date of Initial Opinion:</b>	9/25/2012
<b>Outcome of Initial Opinion:</b>	Grant of summary judgment to plaintiffs.
<b>Reasoning:</b>	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 ( <i>AFSCME Council 25 v. State Employees Ret. Sys.</i> , 294 Mich. App. 1 (2011)).

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## Not Available

NO. NOT AVAILABLE

30th Judicial Circuit, Ingham County

Judge Rosemaria Aquilina

Filed 9/4/2012

<b>Type of Pension Reform:</b>	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.
<b>Title of Bill:</b>	SB 1040
<b>Date Enacted:</b>	9/4/2012



**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.<sup>7</sup>

**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.

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<sup>7</sup> See [www.mea.org/mea-aft-score-wins-against-sb-1040](http://www.mea.org/mea-aft-score-wins-against-sb-1040)





## 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

<b>Type of Pension Reform:</b>	Reduced cost-of-living adjustments.
<b>Title of Bill:</b>	SF 2918
<b>Date Enacted:</b>	5/22/2009 for 2009 legislation and 5/10/2010 for 2010 legislation
<b>Basis of Lawsuit:</b>	Plaintiffs alleged that cost-of-living adjustment reductions violated the state and U.S. Constitution's Contracts clauses and Takings clauses.
<b>Date of Initial Opinion:</b>	6/29/2011
<b>Outcome of Initial Opinion:</b>	Grant of summary judgment to the state of Minnesota and rejection of plaintiffs' claims.
<b>Reasoning:</b>	"First, statutes are not contracts absent plain and unambiguous 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 annuities, 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).
<b>Pending Developments:</b>	No appeal has been filed. <sup>8</sup>

<sup>8</sup> See [www.macsn.courts.state.mn.us/ctrack/publicLogin.jsp](http://www.macsn.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

- 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.<sup>9</sup>

<sup>9</sup> See [www.molanmilner.com/cases\\_to\\_follow](http://www.molanmilner.com/cases_to_follow)



## 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

<b>Type of Pension Reform:</b>	Limited benefits to 75 percent of compensation at time of retirement.
<b>Title of Bill:</b>	HB 671
<b>Date Enacted:</b>	7/21/2003
<b>Basis of Lawsuit:</b>	The plaintiffs alleged that the limitation on retirement benefits violated the state constitution's Contracts Clause.
<b>Date of Initial Opinion:</b>	10/14/2010
<b>Outcome of Initial Opinion:</b>	Grant of plaintiffs' motion for summary judgment.
<b>Reasoning:</b>	"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). <sup>10</sup>
<b>Date of Appellate Opinion:</b>	3/30/2012
<b>Outcome of Appeal:</b>	The New Hampshire Supreme Court upheld one aspect of the trial court's decision but reversed and remanded to reconsider the substantiality question.
<b>Reasoning:</b>	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).

<sup>10</sup> See [www.molanmilner.com/cases\\_to\\_follow](http://www.molanmilner.com/cases_to_follow)



## 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 will have a “case structuring conference” on January 17, 2013, to set dates for discovery and other matters.<sup>11</sup>

<sup>11</sup> See [www.molanmilner.com/cases\\_to\\_follow](http://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

<b>Type of Pension Reform:</b>	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.
<b>Type of Bill:</b>	HB 2
<b>Date Enacted:</b>	6/29/2011
<b>Basis of Lawsuit:</b>	U.S. and New Hampshire Contracts and Takings clauses.
<b>Date of Initial Opinion:</b>	9/25/2012
<b>Outcome of Initial Opinion:</b>	The judge transferred the case to the New Hampshire Supreme Court for an interlocutory appeal.
<b>Reasoning:</b>	Similar cases are pending before the New Hampshire Supreme Court.
<b>Pending Developments:</b>	With the lower court's approval, the parties filed an interlocutory appeal with the New Hampshire Supreme Court on December 10, 2012. <sup>12</sup>

<sup>12</sup> See [www.molanmilner.com/cases\\_to\\_follow](http://www.molanmilner.com/cases_to_follow)



## 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

<b>Type of Pension Reform:</b>	Increased contribution rates for judges.
<b>Title of Bill:</b>	S 2937
<b>Date Enacted:</b>	6/28/2011
<b>Basis of Lawsuit:</b>	Requiring higher contributions from sitting judges was unconstitutional.
<b>Date of Initial Opinion:</b>	10/26/2011
<b>Outcome of Initial Opinion:</b>	Judge ruled that state judges do not have to pay higher contribution rates. <sup>13</sup>
<b>Reasoning:</b>	State constitution prevents judges from having their salaries diminished while in office.
<b>Date of Appellate Opinion:</b>	7/24/2012
<b>Outcome of Appeal:</b>	In Docket 69,401, the New Jersey Supreme Court issued a ruling striking down pension reform as applied to judges.
<b>Reasoning:</b>	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

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

<sup>13</sup> See [www.nj.com/news/index.ssf/2011/10/judge\\_nixes\\_christie\\_request\\_t.html](http://www.nj.com/news/index.ssf/2011/10/judge_nixes_christie_request_t.html).



<b>Date of Initial Opinion:</b>	3/5/2012
<b>Outcome of Initial Opinion:</b>	Dismissal of lawsuit.
<b>Reasoning:</b>	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.
<b>Pending Developments:</b>	Plaintiffs filed a state court lawsuit based on the same claims, on March 29, 2012 (see below).

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## Berg v. Christie

NO. MER-L-2996-11.

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

### REFERENCE DOCUMENTS:

State Brief

<b>Type of Pension Reform:</b>	Reduced cost-of-living adjustment.
<b>Title of Bill:</b>	S 2937
<b>Date Enacted:</b>	6/28/2011
<b>Basis of Lawsuit:</b>	Breach of contract, violation of the state Contracts Clause and due process, violation of the New Jersey Civil Rights Act.
<b>Date of Initial Opinion:</b>	5/29/2012
<b>Outcome of Initial Opinion:</b>	Judge made an oral decision that plaintiffs are not entitled to cost-of-living adjustments on retirement. <sup>14</sup>
<b>Pending Developments:</b>	New Jersey unions plan to appeal. <sup>15</sup>

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<sup>14</sup> See [www.nj.com/hudson/voices/index.ssf/2012/05/daily\\_poll\\_should\\_retired\\_publ.html](http://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>

<sup>15</sup> See [www.nj.com/hudson/voices/index.ssf/2012/05/daily\\_poll\\_should\\_retired\\_publ.html](http://www.nj.com/hudson/voices/index.ssf/2012/05/daily_poll_should_retired_publ.html)



## 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.



## 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 modifying 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.



## CINCINNATI

### 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.

## CINCINNATI

### 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.<sup>16</sup>

<sup>16</sup> The docket for this case is available at [www.courtclerk.org/case\\_summary.asp?sec=history&casenumber=A%201105049](http://www.courtclerk.org/case_summary.asp?sec=history&casenumber=A%201105049)



## 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

<b>Type of Pension Reform:</b>	Retirement age, years of service, final average salary, and cost-of-living adjustments.
<b>Title of Bill:</b>	HB 7397
<b>Date Enacted:</b>	6/30/2009
<b>Basis of Lawsuit:</b>	Plaintiffs alleged the pension legislation violated the Rhode Island Constitution's Contracts Clause and Takings Clause.
<b>Date of Initial Opinion:</b>	9/13/2011
<b>Outcome of Initial Opinion:</b>	Denial of Rhode Island's motion for summary judgment, allowing the lawsuit to proceed further on the merits.
<b>Reasoning:</b>	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 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.
<b>Pending Developments:</b>	A trial will likely take place later in 2012. <sup>17</sup>
<b>Date of Appellate Opinion:</b>	11/22/2011
<b>Outcome of Appeal:</b>	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.
<b>Reasoning:</b>	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).

<sup>17</sup> See [www.ricouncil94.org/NewsEvents/StatePensionLitigationUpdate/tabid/213/Default.aspx](http://www.ricouncil94.org/NewsEvents/StatePensionLitigationUpdate/tabid/213/Default.aspx)



## 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.

# 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

<b>Type of Pension Reform:</b>	Reduced cost-of-living adjustment for future and current retirees.
<b>Title of Bill:</b>	SB 20
<b>Date Enacted:</b>	3/12/2010
<b>Basis of Lawsuit:</b>	Plaintiffs argued that a reduction in the cost-of-living adjustment violated the state and federal Contracts clauses and the federal Takings Clause.
<b>Date of Initial Opinion:</b>	4/11/2012
<b>Outcome of Initial Opinion:</b>	State of South Dakota received a grant of summary judgment, and plaintiff's claims were rejected.
<b>Reasoning:</b>	"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  
VALLEY  
AUTHORITY

REFERENCE DOCUMENTS:

Complaint  
Court Order

## 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

- 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 defendants filed a joint mediation report on April 20, 2012, announcing that they intended to settle the case via mediation.



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

NO. 342-262392-12

District Court of Tarrant County, 342nd Judicial District

Filed 10/23/2012

### REFERENCE DOCUMENTS:

Ordinance  
Complaint  
Motion to Dismiss

**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.<sup>18</sup>

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## 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

**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.

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<sup>18</sup> See [www.star-telegram.com/2012/10/23/4358587/fort-worth-city-council-approves.html](http://www.star-telegram.com/2012/10/23/4358587/fort-worth-city-council-approves.html)



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

- 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.<sup>19</sup>
- Pending Developments:** Summary Judgment hearing is scheduled for June 28, 2012. A ruling would issue some time after the hearing.

<sup>19</sup> See [www.wfse.org/?zone=/unionactive/view\\_article.cfm&HomeID=220852&page=Legal](http://www.wfse.org/?zone=/unionactive/view_article.cfm&HomeID=220852&page=Legal)



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- American Federation of State, County, and Municipal Employees, Local 101 v. City of San Jose, No. 112-CV-227864 (Santa Clara County Superior Court, Cal. 2012).
- American Federation of Teachers v. State of New Hampshire, No. 09-E-0290 (Merrimack County Superior Court, N.H. 2010).
- Barnes v. Arizona State Retirement System, No. CV2011-011638 (Maricopa County Superior Court, Ariz. 2012).
- 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).
- Boston Police Superior Officers Federation v. Patrick, No. 1:09-cv-11137-NMG (D. Mass. 2009).
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- 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 (3rd District Court of Appeal, Fla. 2012).
- City of San Jose v. San Jose Police Officers' Association, No. 12-cv-02904 (N.D. Cal. 2012).
- Cloutier v. State of New Hampshire, No. 219-2009-CV-00525 (Strafford County Superior Court, N.H. 2009).

- 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).
- Fraternal Order of Police, Miami Lodge 20 v. City of Miami, No. 10-47918-CA-13 (Eleventh Judicial Circuit, Miami-Dade County, Fla. 2012).
- Harris v. City of San Jose, No. 112-CV-226570 (Santa Clara County Superior Court, Cal. 2012).
- Idaho Education Association v. State of Idaho, Case No. CVOC 1108212 (Fourth Judicial District, County of Ada, Idaho 2011).
- Justus v. State of Colorado, Case No. 2010-CV-1589 (Denver County District Court, Colo. 2011).
- Justus v. State of Colorado, Case No. 2012 COA 169 (Court of Appeals, Colo. 2012).
- Maine Association of Retirees v. Board of Trustees of the Maine Public Employee Retirement System, No. 1:12-cv-00059 (D. Maine. 2012).
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- Public Employment Relations Board v. City of San Diego, No. 37-2012-00092205-CU-MC-CTL (San Diego Superior Court, Cal. 2012).

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- San Jose Police Officers' Association v. City of San Jose, No. 112-CV-225926 (Santa Clara County Superior Court, Cal. 2012).
- Sapien v. City of San Jose, Case No. 112-CV-225928 (Santa Clara County Superior Court, Cal. 2012).
- Swanson v. State of Minnesota, Court File No. 62-CV-10-05285 (2nd Judicial District, Ramsey County, Minn. 2011).
- Taylor v. City of Gadsden, No. 4:11-cv-03336 (N.D. Ala. 2011).
- Tice v. State of South Dakota, Civil No. 10-225 (6th Judicial Circuit, Hughes County, S.D. 2010).
- Tice v. State of South Dakota, Civil No. 10-225 (6th Judicial Circuit, Hughes County, S.D. 2012).
- Van Houten v. City of Fort Worth, No. 4:12-cv-00826-Y (N. D. Texas 2012).
- Williams v. Scott, Case No. 2011 CA 1584 (2nd Judicial Circuit, Leon County, Fla. 2011).