

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

RHODE ISLAND PUBLIC EMPLOYEES'
RETIREE COALITION, AFSCME,
COUNCIL 94 RETIREE CHAPTER,
NEARI-RETIRED, RI AFT/R LOCAL
8037, RHODE ISLAND RETIRED
TEACHERS ASSOCIATION, RHODE
ISLAND ASSOCIATION OF RETIRED
PRINCIPALS, RHODE ISLAND
LABORERS' RETIREE COUNCIL,
DAVID FLORIO, JAMES GILLIS,
CAROL KEISER, MARK KURTZMAN,
MARY ANN PARKER, ANTHONY
PICCIRILLI,

C.A. No. PC 12- 3166

Plaintiffs,

vs.

LINCOLN D. CHAFEE, in his capacity as
Governor of the State of Rhode Island,
GINA RAIMONDO, in her capacity as
General Treasurer of the State of Rhode
Island, and the EMPLOYEES'
RETIREMENT SYSTEM OF RHODE
ISLAND, by and through the
RETIREMENT BOARD, by and through
Gina Raimondo, in her capacity of
Chairperson of the Retirement Board, and
Frank J. Karpinski, in his capacity as
Secretary of the Retirement Board.

Defendants.

COMPLAINT

1. This is a civil action requesting injunctive, declaratory and other relief to prohibit the unconstitutional and otherwise unlawful implementation of Public Law 2011, chapters 408 and 409, otherwise known as the Rhode Island Retirement Security Act of 2011 ("RIRSA"), as it relates to suspending and reducing, on a retroactive basis, the vested retirement benefits of already-retired Rhode Island public employees.

JURISDICTION

2. The jurisdiction of this Court is invoked pursuant to G.L. 1956 §§ 8-2-13, 8-2-14, 9-30-1, as well as the Rhode Island Constitution and the general jurisdiction of the Superior Court.

PARTIES

Plaintiffs

3. Plaintiff, Rhode Island Public Employees' Retiree Coalition ("RIPERC") is an association comprised of individual retired state and municipal employees and retired public school teachers who are current beneficiaries of the Employees Retirement System of Rhode Island ("ERSRI").

4. Plaintiff, AFSCME, Council 94 Retiree Chapter, is an association of retired state and municipal employees who are current beneficiaries of ERSRI.

5. Plaintiff, R.I. AFT/R Local 8037, is an association of retired public school teachers who are current beneficiaries of ERSRI.

6. Plaintiff, Rhode Island Retired Teachers Association is an association of retired public school teachers who are current beneficiaries of ERSRI.

7. Plaintiff, NEARI-Retired, is an association of retired public school teachers who are current beneficiaries of ERSRI.

8. Plaintiff, Rhode Island Association of Retired Principals, is an association of retired public school administrators who are current beneficiaries of ERSRI.

9. Plaintiff, Rhode Island Laborers' Retiree Council is an association of retired state and municipal employees who are current beneficiaries of ERSRI.

10. The Plaintiffs set forth in paragraphs 3-9 are collectively referred to as the "Plaintiff-Associations." The Plaintiff-Associations are representing the interests of its members who are former employees of the state or a municipality or a school district that retired prior to the enactment and effective date of RIRSA and that are affected negatively by RIRSA. The total membership of these organizations exceeds about 6,000 retirees.

11. Plaintiff David Florio ("Florio") is a retired state employee and beneficiary of ERSRI. Florio was employed by the State of Rhode Island for about 28 years between May 1980 and May 2008. His last position was in the Department of Corrections, Probation and Parole. In May 2008, Florio retired on a service pension at age 52 with a yearly benefit of about \$49,000. With COLAs, his current yearly benefit is about \$67,000.

12. Plaintiff James A. Gillis ("Gillis") is a retired state employee and beneficiary of ERSRI. Gillis was employed by the State of Rhode Island for about 27 years between 1972 and

1999. His last position was in the Department of Human Services. In 1999, Gillis retired on a service pension at age 57 with a yearly benefit of about \$40,000. With COLAs, his current yearly benefit is about \$37,000.

13. Plaintiff Gillis took the "social security option" which provides for a higher monthly retirement allowance before age 62. At age 62, the retirement allowance is adjusted downward. If Gillis had not taken the option, his current annual benefit would be higher. Had Gillis known that the COLA would be taken away, he would not have chosen the social security option and would have instead opted to have a higher pension at age 62 to ensure the maximum retirement allowance throughout the duration of his retirement.

14. Plaintiff Gillis is also a beneficiary of the ERSRI receiving a death benefit because his wife died while she was employed by the State. Kathleen Gillis was a state employee when she had a heart attack at age 54 in about 1992. The original benefit paid to Plaintiff Gillis was about \$5,800 annually. With COLAs, Gillis' benefit has increased to about \$9,000 annually.

15. Plaintiff Carol Keiser ("Keiser") is a retired public school teacher and beneficiary of ERSRI. Keiser was employed by the Pawtucket School Department for about 28 years between September 1971 and June 1999. Her last position was as an elementary school teacher at McCabe Elementary School in Pawtucket, RI. In June 1999, Keiser retired on a service pension at age 50 with a yearly benefit of about \$31,000. Keiser also elected the "social security option" at retirement, which means her current pension benefit is about the same as it was when she first retired.

16. Plaintiff Mark Kurtzman ("Kurtzman") is a retired school psychologist and beneficiary of ERSRI. Kurtzman was employed by the Woonsocket School Department for about 33 years between September 1978 and June 2011. In June 2011, Kurtzman retired on a service pension at age 56. His current pension benefit is about \$46,000 annually.

17. Plaintiff Mary Ann Parker ("Parker") is a retired state employee and beneficiary of ERSRI. Parker was employed by the State for about 12 years from July 1987 to July 1999. Her last position was as a senior accountant at Eleanor Slater Hospital. In July 1999, Parker retired on a service pension at age 67 with an annual benefit of about \$600 per month. With COLAs, that annual retirement allowance has increased to about \$800 per month. Plaintiff Parker is an 80-year-old widow and still has a mortgage on her home.

18. Plaintiff Anthony Piccirilli is a retired state employee and beneficiary of ERSRI. Piccirilli was employed by the State of Rhode Island for 35 years between November 1, 1969 and November 1, 2004. His last position was in the Superior Court as Deputy Clerk I. Piccirilli retired on a service pension at age 58. Piccirilli benefit was about \$55,000 until age 62, when it was reduced to \$43,000 due to the fact that he took the social security option.

19. All of the affected members of the Plaintiff-Associations and the individual Plaintiffs, as retirees, have fully performed their employment and other contractual obligations to the State or municipality by whom they were employed, by the time of retirement.

20. Pursuant to G.L. 1956 § 9-30-11 and Rule 24(d), the Attorney General has been provided with a copy of this Complaint.

Defendants

21. Defendant, Lincoln D. Chafee ("Governor") is sued in his official capacity as Governor of the State of Rhode Island.

22. Defendant, Gina Raimondo ("Treasurer") is sued in her official capacity as the General Treasurer of the State of Rhode Island. Pursuant to § 42-10-11 et seq., the Treasurer has the responsibility for and control of state funds and the payment of state and municipal retirement benefits administered through the ERSRI. Pursuant to G.L. 1956 § 36-8-9, the Treasurer shall serve as ex-officio chairperson of the Rhode Island Retirement Board ("Retirement Board") and custodian and treasurer of the funds of the Employees' ERSRI Retirement System.

23. Defendant, ERSRI is established and placed under the management of the Rhode Island Retirement Board ("Retirement Board") pursuant to G.L. 1956 §§ 36-8-2 and 36-8-3. The Retirement Board is sued by and through its Chair, Gina Raimondo, and its Executive Director Frank J. Karpinski, who, pursuant to G.L. 1956 § 36-8-9, by statute is in charge of administration of the retirement system and serves as Secretary to the Retirement Board. The ERSRI and the Retirement Board are hereinafter referred to collectively as "the Retirement System."

24. Defendants are hereinafter referred to collectively as "the State."

STATEMENT OF FACTS

25. The State Retirement System is a creature of the legislature and has been in existence since 1936. P.L. 1936, ch. 2334, codified at G.L. 1956 §§ 36-8-1 to 36-10.4.

26. The Retirement System is administered by the Retirement Board. GL. 1956 § 36-8-3.

27. The System was originally created only for state employees. In 1949, membership in the retirement system was extended to teachers. P.L. 1948, ch. 2101, § 2, codified at G.L. 1956 § 16-16-1 et seq.

28. In 1951, membership in the system was extended to certain municipal employees. P.L. 1951, ch. 2784, codified at G.L. 1956 § 45-21-1 et seq.

29. There are several plans under the administration of the Board. The state employees and teachers are part of the Employees' Retirement System ("ERS") and the municipal participants are part of the Municipal Employees' Retirement System ("MERS"). There are also separate plans for Judges and State Police.

30. ERSRI provides a mandatory, contributory, defined benefit pension plan. Under this system, the ERSRI requires participants to contribute a statutorily-set percentage of his or her annual salary. In exchange, participants are paid a fixed retirement allowance upon reaching

statutorily defined age and/or service requirements.

31. The nature of the defined benefit plan is that the State is supposed to determine, on an actuarial basis, the amount of annual required contribution ("ARC") necessary to sustain the benefits it has promised. Thus, the nature of the ARC is that it changes annually based on any number of factors. The State calculates the ARC based upon a percentage of payroll.

32. Upon information and belief, the system has not always been actuarially funded.

33. Before July 1, 2012: (a) State employee participants contributed 8.75% of each year's compensation to the Retirement System (G.L. 1956 § 36-10-1); (b) public school teachers contributed 9.5% of each year's compensation to the Retirement System (G.L. 1956 § 16-16-22); and (c) municipal participants contributed at least 6% of each year's compensation to the Retirement System (G.L. 1956 § 45-21-41).

34. On June 20, 1968, the General Assembly enacted its first law involving cost of living retirement adjustments ("COLAs") for state employees. P.L. 1968, ch. 231, codified at § 36-10-35.

35. A COLA is a "living pension" that serves to maintain the real value of a person's pension in light of changes in the cost of living that occur over the life of a retirement.

36. The COLA was first enacted on a retroactive basis for already-retired employees.

37. In 1970, the COLA was increased to 3 percent annually for the pre-1967 retirees.

38. In 1970, a COLA was added to state employees' pension benefits for those who retired after January 1, 1968. The COLA enacted was 3 percent, not compounded, to be paid annually. P.L. 1970, ch. 112, Art. X, § 1.

39. In 1970, a COLA was added to teachers' pension benefits which essentially mirrored the state employees' COLA, 3 percent, not compounded, to be paid annually. P.L. 1970, ch. 112, Art. X, § 2.

40. In 1981, the manner of calculating the COLA was changed, to the benefit of ERS members, from simple to compounded. P.L. 1980, ch. 237, § 1 (teachers) and P.L. 1980, ch. 237, § 2 (state employees).

41. In 1980, the General Assembly enacted G.L. 1956 § 45-21-52 which provided for an "Automatic Increase in Service Retirement Allowance" for MERS participants, as long as the legislative body of the respective city or town voted to extend the benefit to the respective employees. P.L. 1980, ch. 172, § 2.

42. In addition, MERS employees are required to contribute an additional 1 percent of their salary "concurrently with and addition to contributions otherwise being made to the retirement system," in order to be eligible for a COLA. P.L. 1980, ch. 172, § 2.

43. A city or town that agrees to provide a COLA to its retirees "shall make any additional contributions to the system, pursuant to the terms of § 45-21-42, for the payment of any benefits provided by this section." P.L. 1980, ch. 172, § 2.

44. From 1981 to the present, the MERS COLA has been 3 percent, not compounded, paid annually.

45. In many cities and towns, the MERS COLA was made part of the collective bargaining agreement.

46. The Plaintiffs and the affected members represented by the Plaintiff-Associations all retired at a time when the 3 percent COLA (whether simple or compounded) was a benefit of employment that was promised as part of the pension benefit, to be calculated on the entire pension allowance, that would continue throughout retirement.

47. In 2010, the State enacted P.L. 2010, ch. 23, art. 16 decreasing COLA benefits for employees not eligible to retire as of June 12, 2010, including those who had ten (10) years of service or more. The 2010 Act eliminated the COLA for retirement allowance benefits in excess of \$35,000. The 2010 Act provided the COLA would commence only upon the third anniversary date of retirement or age 65, whichever is later. Finally, the 2010 Act limited the COLA to the less of the Consumer Price Index or 3%.

48. The 2010 COLA changes are the subject of pending litigation challenging the constitutionality of those reductions.

49. The 2010 COLA changes did not affect already-retired state or municipal employees or public school teachers.

50. Prior to 2011, the State had never purported to alter the COLA for already-retired employees.

51. In November 2011, the General Assembly of the State of Rhode Island enacted RIRSA, which upon information and belief, retroactively and substantially altered COLAs for already-retired state employees, public school teachers and certain municipal employees, to their substantial injury. RIRSA was signed into law by Governor Chafee on November 18, 2011. Among other things:

a. RIRSA terminated the COLAs to all existing retirees which ordinarily would be paid annually in January 2013, and each year thereafter during the life of the retirement based upon the entire retirement allowance.

b. RIRSA does not allow, at any time, for the full restoration of the COLAs in the amounts and frequency originally promised to the retirees.

c. RIRSA instead provides that no COLA will be paid annually to retired teachers and

state employees until the "system" is 80 percent funded. The "system" for purposes of determining whether COLAs will be paid to state employees and public school teachers includes the aggregate of the ERS, the State Police Retirement Benefits Trust and the Judicial Retirement Benefits Trust. According to State estimates, the annual COLA will not be restored for about 16 years.

d. RIRSA provides that no COLA will be paid to MERS beneficiaries until the individual MERS plan to which the beneficiary belongs reaches 80 percent funding.

e. Even if the plans reach 80 percent funding (and thus, an annual COLA returns), RIRSA reduces the amount of the COLA in two ways. First, it reduces the percentage applied by eliminating the 3 percent compounded COLA and instead, providing for a COLA that is supposed to range between 0-4 percent, simple. According to the State's actuaries, with a 7.5 percent investment return assumption, the expectation is that the COLA will not reach 3 percent.

f. The second way the COLA will be reduced under RIRSA is that even if the COLA returns, it will apply only to the first \$25,000 of a beneficiary's retirement allowance.

g. Until the system is 80 percent funded, the significantly reduced COLAs will only be paid every five years.

52. All affected members of the Plaintiff-Associations and the individual Plaintiffs retired after having determined, considered and relied upon, in conjunction with the Retirement System, the amount of pension benefit he or she was entitled to receive over the life of his or her retirement, which included the COLA that would be applied throughout the duration of the retirement.

53. Upon information and belief, no Plaintiff-Association member or retiree was ever told by Defendants during employment or at the time of retirement that his or her COLA could or would ever be reduced or suspended during the life of their retirement.

Count I

Contract Clause of the R.I. Constitution (Article 1, Section 12)

54. Plaintiffs hereby incorporate by reference Paragraphs 1 through 53 of the Complaint as if fully set forth herein.

55. The Rhode Island Constitution, Article 1, Section 12 provides: "In order effectually to secure the religious and political freedom established by our venerated ancestors, and to preserve the same for our posterity, we do declare that the essential and unquestionable rights and principles hereinafter mentioned shall be established, maintained, and preserved, and shall be of paramount obligation in all legislative, judicial and executive proceedings. * * * Section 12 * * * No ex post facto law, or law impairing the obligation of contracts, shall be passed."

56. Pension benefits, including the COLA, vest to the employee, at the very latest, at the time that the employee meets the pension statute requirements in existence at the time of the employees' retirement.

57. The Act will substantially reduce and diminish the Plaintiffs' retirement benefits and contractual rights by eliminating the contractually promised COLA.

58. The State will be unable to demonstrate that abrogating its contract with the retirees was for a legitimate public purpose.

59. If the State establishes that its legislation was enacted for a legitimate public purpose as it relates to the retirees, the State will be unable to demonstrate that the means chosen are reasonable and necessary to meet that purpose.

60. Plaintiff-Associations' members and the individual Plaintiffs have a constitutional right to continue to receive the vested pension COLA benefit existing at the time of each members' retirement which cannot be retroactively decreased or altered for the reasons given by the State.

Count II
Due Process Clause of the R.I. Constitution
(Article 1, Section 2)

61. Plaintiffs hereby incorporate by reference Paragraphs 1 through 60 of the Complaint as if fully set forth herein.

62. The Rhode Island Constitution, Article 1, Section 2 provides: "In order effectually to secure the religious and political freedom established by our venerated ancestors, and to preserve the same for our posterity, we do declare that the essential and unquestionable rights and principles hereinafter mentioned shall be established, maintained, and preserved, and shall be of paramount obligation in all legislative, judicial and executive proceedings. * * * Section 2. Laws for good of whole -- * * * Due process -- * * * All free governments are instituted for the protection, safety, and happiness of the people. All laws, therefore, should be made for the good of the whole; and the burdens of the state ought to be fairly distributed among its citizens. No person shall be deprived of life, liberty or property without due process of law * * *."

63. Based on the foregoing, the Act is unconstitutional under the Due Process Clause of the Rhode Island Constitution.

Count III
Takings Clause of the R.I. Constitution
(Article I, Section 16)

64. Plaintiffs hereby incorporate by reference Paragraphs 1 through 63 of the Complaint as if fully set forth herein.

65. The Rhode Island Constitution, Article 1, Section 16 provides: "In order effectually to secure the religious and political freedom established by our venerated ancestors, and to preserve the same for our posterity, we do declare that the essential and unquestionable rights and principles hereinafter mentioned shall be established, maintained, and preserved, and shall be of paramount obligation in all legislative, judicial and executive proceedings. * * *Section 16. Compensation for taking of private property for public use * * * Private property shall not be taken for public uses, without just compensation. * * *"

66. Based on the foregoing, the Act is unconstitutional under the Takings Clause of the Rhode Island Constitution.

Count IV
Promissory Estoppel

67. Plaintiffs hereby incorporate by reference Paragraphs 1 through 66 of the Complaint as if fully set forth herein.

68. Based on the foregoing, Defendants have made promises to Plaintiffs upon which they reasonably relied to their detriment.

69. Plaintiffs are damaged by the reliance which was induced by Defendants.

Count V
Breach of Contract

70. Plaintiffs hereby incorporate by reference Paragraphs 1 through 69 of the Complaint as if fully set forth herein.

71. By the aforesaid actions, Defendants have violated the contract between the State and the members of the Plaintiff-Associations' and between the State and the individual Plaintiffs as it relates to their pension benefits promised upon retirement.

72. Absent injunctive relief, Plaintiffs will be damaged by the contract violations and are entitled to money damages.

WHEREFORE, Plaintiffs respectfully requests the Court to:

1. Issue equitable relief, including, but not limited to, a temporary restraining order, preliminary and permanent injunction prohibiting the State and its agents, including the Retirement System, from applying the RIRSA to the Plaintiffs or the Plaintiffs' members;

2. Issue declaratory judgment pursuant to G.L. 1956 § 9-30-1, declaring that the RIRSA contravenes the Contracts Clause, Due Process Clause and Takings Clause of the R.I. Constitution and is otherwise illegal;

3. Find Defendants have breached its contracts with Plaintiffs and award money

damages;

4. Restore and make whole all retirement benefits diminished or eliminated by the RIRSA;

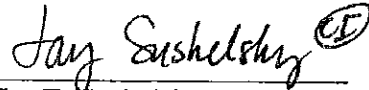
5. Award Plaintiffs the costs of the suit;

6. Award such other and further relief as the Court deems necessary and proper.

Plaintiffs,
By their Attorneys,



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Dated: June 22, 2012

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

RHODE ISLAND PUBLIC EMPLOYEES'
RETIREE COALITION, et al.,
Plaintiffs,

vs.

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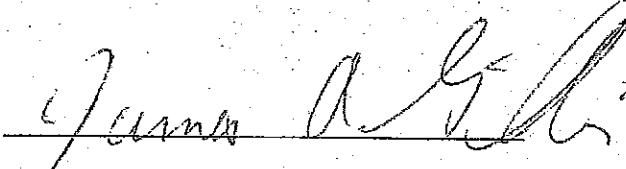
C.A. No. PC 12- 3166

VERIFICATION

I, James A. Gillis, first being duly sworn, do hereby depose and state as follows:

1. I am a retired state employee currently receiving a retirement allowance, including a COLA, from the Employees' Retirement System of Rhode Island ("ERSRI").

2. I have read the complaint filed in the above-captioned action, in particular paragraphs 12-14 which contain information about my employment and retirement benefits and it is true and correct to the best of my knowledge, information and belief.


James A. Gillis

Subscribed and sworn to this 22nd day of June, 2012.


Notary Public

expl 2/14/16
52747

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

RHODE ISLAND PUBLIC EMPLOYEES'
RETIREE COALITION, et al.,
Plaintiffs,

vs.

LINCOLN D. CHAFEE, et al.
Defendants.

C.A. No. PC 12- 3166

VERIFICATION

I, Mary Ann Parker, first being duly sworn, do hereby depose and state as follows:

1. I am a retired state employee currently receiving a retirement allowance, including a COLA, from the Employees' Retirement System of Rhode Island ("ERSRI").
2. I have read the complaint filed in the above-captioned action, in particular paragraphs 17 which contain information about my employment and retirement benefits and it is true and correct to the best of my knowledge, information and belief.

Mary A. Parker

Mary Ann Parker

Subscribed and sworn to this 22nd day of June, 2012.

L B G

Notary Public #

52747

exp. 2/14/16