

**HEARING DATE: July 16, 2012 at 9:30 a.m.**

STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

RHODE ISLAND PUBLIC EMPLOYEES'  
RETIREMENT COALITION, et al.

Plaintiffs,

v.

LINCOLN D. CHAFEE, et al.,

Defendants.

C.A. No. 12-3166

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STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

BRISTOL/WARREN REGIONAL SCHOOL  
EMPLOYEES, LOCAL 581, et al.

Plaintiffs,

v.

LINCOLN D. CHAFEE, et al.,

Defendants.

C.A. No. 12-3167

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STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

RHODE ISLAND COUNCIL 94, et al.,

Plaintiffs,

v.

LINCOLN D. CHAFEE, et al.,

Defendants.

C.A. No. 12-3168

STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

CITY OF CRANSTON POLICE OFFICERS, :  
INTERNATIONAL BROTHERHOOD OF :  
POLICE OFFICERS, LOCAL 301, AFL, CIO, et al.:

Plaintiffs, :

C.A. No. 12-3169

v. :

LINCOLN D. CHAFEE, et al., :

Defendants. :

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**MEMORANDUM OF LAW IN SUPPORT OF  
DEFENDANTS' OBJECTION TO PLAINTIFFS'  
MOTION TO CONSOLIDATE**

Defendants 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 Employees' Retirement System of Rhode Island, by and through the Retirement Board, by and through Gina Raimondo, in her capacity as Chairperson of the Retirement Board, and Frank J. Karpinski, in his capacity as Secretary of the Retirement Board ("Defendants") submit this memorandum of law in support of its objection to Plaintiffs' Motion to Consolidate (the "Motion"). As set forth more fully herein, Defendants ask this Court to consolidate the above-captioned cases *for purposes of discovery only* and reserve judgment on whether the above-captioned cases should be consolidated for purposes of trial because consolidation for all purposes is premature and, therefore, inappropriate at this preliminary stage in these proceedings.

## ARGUMENT

This Court should deny Plaintiffs' request to consolidate the above-captioned cases for all purposes and instead, should consolidate them for purposes of discovery only and reserve judgment on whether consolidation for purposes of trial is proper.

Each of the above-captioned cases was commenced on June 22, 2012. On the same day that the complaints in the above-captioned cases were filed, Plaintiffs filed their Motion seeking permission to consolidate these four cases. In their Motion, Plaintiffs have taken the position that each of these cases will involve a common question of law and fact relating to the enactment of the Rhode Island Retirement Security Act of 2011. Motion at 2. Plaintiffs further maintain that consolidation will assist in avoiding unnecessary costs and delay and will serve judicial economy and efficiency. *Id.* At this time, none of the named Defendants has been served (although counsel for Defendants have agreed to accept service of process), none of the Defendants have answered or otherwise responded to Plaintiffs' complaints (nor has the time come for them to do so) and no discovery has occurred.

Consequently, these cases, in their infancy, are not ripe for consolidation at this time. The trial court has the power to "order that several cases pending before it be tried together where they are of the same nature, arise from the same act or transaction, involve the same or like issues, depend substantially upon the same evidence, even though it may vary in its details in fixing responsibility, and where such a trial will not prejudice the substantial rights of any party." *School Comm. of Cranston v. Bergin-Andrews*, 984 A.2d 629, 647 (R.I. 2009). Here, however, it is too early in these cases to make a final determination that "they are of the same nature, arise from the same act or transaction, involve the same or like issues [and] depend

substantially upon the same evidence” and that “a [consolidated] trial will not prejudice the substantial rights of any party.” *Id.*

Nevertheless, pursuant to Rule 42 of the Rhode Island Rules of Civil Procedure, the Court may, at this juncture, order consolidation for purposes of discovery only and reserve judgment on whether to consolidate the cases for trial until such time as there is a more complete and developed record. *See Taraco Precision Testing, Inc. v. FW Realty, LLC*, No. PB 07-1292, 2008 R.I. Super. LEXIS 3 (R.I. Super. Ct. Jan. 7, 2008); *see also Triton Realty Ltd. Partnership v. Almeida*, No. 04-2335, No. 03-2061, 2005 R.I. Super. LEXIS 128 (R.I. Super. Ct. Aug. 17, 2005) (recognizing that the Court has the authority to consolidate cases for purposes of discovery only to conserve the resources of the parties, witnesses and the Court). For example, in *Taraco Precision Testing, Inc.*, the Court (Silverstein, J.) found that the “most prudent path for the Court to take at [that] time” was to consolidate the cases for discovery and reserve judgment on whether to consolidate for trial. *Taraco Precision Testing, Inc.*, 2008 R.I. Super. LEXIS 3 at \*19-21. Indeed, when a motion to consolidate is filed when cases are in their preliminary stages, a motion to consolidate for purposes of discovery is more appropriate. *See Triton Realty Ltd. Partnership*, 2005 R.I. Super. LEXIS 128 (citing *Newmark v. Turner Broad. Network*, 226 F. Supp. 2d 1215, 1223 n.8 (C.D. Cal. 2002), in which the court held that consolidation for discovery was proper but “reserve[d] for another day the issue of whether [the] actions should be consolidated for trial” because the case was in “the early stage of litigation” when the motion to consolidate was filed).

Consistent with these authorities, this Court should only consolidate the above-captioned cases for discovery at this time. An order consolidating the cases for purposes of discovery will

conserve the resources of the parties, witnesses and the Court and will not prejudice the rights of any party.

**CONCLUSION**

For the forgoing reasons, this Court should consolidate the above-captioned cases for purposes of discovery only and reserve judgment on whether the above-captioned cases should be consolidated for purposes of trial.

EMPLOYEES' RETIREMENT SYSTEM  
OF RHODE ISLAND

By its attorneys,



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July 12, 2012

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July 12, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that on the 12th day of July, 2012, I did send a true copy of the within Objection by **first class mail and email** to:

Attorneys for Plaintiffs:

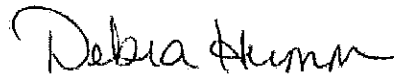
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