

RHODE ISLAND COUNCIL 94, AFSCME, AFL-CIO;  
NATIONAL EDUCATION ASSOCIATION RHODE ISLAND;  
RHODE ISLAND FEDERATION OF TEACHERS AND  
HEALTH PROFESSIONALS; RHODE ISLAND  
BROTHERHOOD OF CORRECTIONAL OFFICERS;  
INTERNATIONAL FEDERATION OF PROFESSIONAL AND  
TECHNICAL ENGINEERS LOCAL 400; NATIONAL  
ASSOCIATION OF GOVERNMENT EMPLOYEES, LOCAL 79;  
RHODE ISLAND EMPLOYMENT SECURITY ALLIANCE,  
LOCAL 401; and RHODE ISLAND ALLIANCE OF SOCIAL  
SERVICE EMPLOYEES, LOCAL 580

P.C.C.A. No. 10-2859

v.

DONALD L. CARCIERI, in his capacity as Governor of the State of Rhode Island; FRANK T. CAPRIO, in his capacity as General Treasurer of the State of Rhode Island; and THE EMPLOYEES' RETIREMENT SYSTEM OF THE STATE OF RHODE ISLAND, by and through the RHODE ISLAND RETIREMENT BOARD, by and through Frank T. Caprio, in his capacity as Chairman of the Retirement Board, and Frank J. Karpinski, in his capacity as Secretary of the Retirement Board

### AMENDED COMPLAINT

#### **Jurisdiction**

1. This is an action for injunctive and other equitable relief and for declaratory judgment.
2. The jurisdiction of this Court is invoked pursuant to R.I. Gen. Laws §§ 8-2-13, 9-30-1, as well as the general jurisdiction of the Superior Court.

#### **Plaintiffs**

3. Plaintiff, Rhode Island Council 94, AFSCME, AFL-CIO, is a statewide labor organization devoted to providing representation and advocacy for its membership. Its members include Rhode Island municipal and state employees. Its local affiliates serve as certified bargaining

unit representatives for Rhode Island municipal and state employees, for purposes of collective bargaining and advocating for the interests of bargaining unit members.

4. Plaintiff, National Education Association Rhode Island, is a statewide labor organization devoted to providing representation and advocacy for its membership. Its members include Rhode Island state employees and public school teachers. Its local affiliates serve as certified bargaining unit representatives for Rhode Island state employees and public school teachers, for purposes of collective bargaining and advocating for the interests of bargaining unit members.
5. Plaintiff, Rhode Island Federation of Teachers and Health Professionals, is a statewide labor organization devoted to providing representation and advocacy for its membership. Its members include Rhode Island state employees and public school teachers. Its local affiliates serve as certified bargaining unit representatives for Rhode Island state employees and public school teachers, for purposes of collective bargaining and advocating for the interests of bargaining unit members.
6. Plaintiff, Rhode Island Brotherhood of Correctional Officers, is a statewide labor organization devoted to providing representation and advocacy for its membership. Its members include Rhode Island state employees. It serves as the certified bargaining unit representative for Rhode Island state employees, for purposes of collective bargaining and advocating for the interests of bargaining unit members.
7. Plaintiff, International Federation of Professional and Technical Engineers Local 400, is a statewide labor organization devoted to providing representation and advocacy for its membership. Its members include Rhode Island state employees. It serves as the certified bargaining unit representative for Rhode Island state employees, for purposes of collective

bargaining and advocating for the interests of bargaining unit members.

8. Plaintiff, National Association of Government Employees, Local 79, is a statewide labor organization devoted to providing representation and advocacy for its membership. Its members include Rhode Island state employees. It serves as the certified bargaining unit representative for Rhode Island state employees, for purposes of collective bargaining and advocating for the interests of bargaining unit members.
9. Plaintiff, Rhode Island Employment Security Alliance, Local 401, is a statewide labor organization devoted to providing representation and advocacy for its membership. Its members include Rhode Island state employees. It serves as the certified bargaining unit representative for Rhode Island state employees, for purposes of collective bargaining and advocating for the interests of bargaining unit members.
10. Plaintiff, Rhode Island Alliance of Social Service Employees, Local 580, is a statewide labor organization devoted to providing representation and advocacy for its membership. Its members include Rhode Island state employees. It serves as the certified bargaining unit representative for Rhode Island state employees, for purposes of collective bargaining and advocating for the interests of bargaining unit members.
11. Plaintiffs are hereinafter referred to collectively as “the Unions.”

#### **Defendants**

12. Defendant Donald L. Carcieri (“Governor”) is sued in his official capacity as Governor of the State of Rhode Island.
13. Defendant Frank T. Caprio (“Treasurer”) is sued in his official capacity as the General Treasurer of the State of Rhode Island. Pursuant to R.I.Gen.Laws §42-10-11 et seq., the Treasurer has responsibility for and control of state funds and the payment of state and

municipal retirement benefits administered through the Employees' Retirement System of the State of Rhode Island. Pursuant to R.I.Gen.Laws §36-8-9, the Treasurer shall serve as ex-officio chairperson of the Rhode Island Retirement Board and custodian and treasurer of the funds of the Employees' Retirement System.

14. Defendant Employees' Retirement System of the State of Rhode Island is established and placed under the management of the Rhode Island Retirement Board pursuant to R.I.Gen.Laws §§36-8-2 and 36-8-3. The Retirement Board is sued by and through its Chair, Frank T. Caprio, and its Executive Director, Frank J. Karpinski, who, pursuant to R.I.Gen.Laws §36-8-9, by statute is in charge of administration of the retirement system and serves as Secretary to the Retirement Board. The Employees' Retirement System of the State of Rhode Island and the Retirement Board are hereinafter referred to collectively as "the Retirement System."
15. Defendants are hereinafter referred to collectively as "the State."

#### **Statement of Facts**

16. The State has established a Retirement System which requires employees of the State and certain municipal employees, including public school teachers, to participate.
17. State employee participants are required to contribute 8.75% of each year's compensation pursuant to R.I.Gen.Laws §36-10-1 to the Retirement System and public school teachers are required to contribute 9.5% of each year's compensation pursuant to R.I.Gen.Laws §16-16-22 to the Retirement System "as his or her share of the cost of annuities, benefits, and allowances."
18. Employees who make ten (10) years of payments to the Retirement System are thereby "vested" pursuant to R.I.Gen.Laws §36-10-9 (state employees) and §16-16-12 (public school

teachers) and entitled to the benefits of retirement upon reaching statutorily-defined age and/or service requirements for retirement, hereinafter referred to as “the standards for retirement.”

19. Among the membership of each of the plaintiffs are state employees and public school teachers who, on September 30, 2009, had at least ten (10) years of contributory service and were entitled to the benefits of retirement upon reaching the standards for retirement but who did not satisfy the standards for retirement as they existed on September 30, 2009. Plaintiffs bring this action in their representative capacity on behalf of these employees, hereinafter referred to as “the 2009 vested employees.”

20. In 2009, the General Assembly of the State of Rhode Island enacted Public Law 2009, chapter 68, hereinafter “the 2009 Act,” which, upon information and belief, substantially altered the standards for retirement for the 2009 vested employees, to their substantial injury.

Among other things:

a. The 2009 Act increased the time that the 2009 vested employees must remain in public employment in order to reach the standard age for retirement with at least ten years of service by as much as three additional years;

b. The 2009 Act reduced the total maximum percentage benefit achievable for some of the 2009 vested employees and required more years of service to achieve this reduced maximum;

c. The 2009 Act eliminated the availability of retirement based solely on years of service for some of the 2009 vested employees.

21. The 2009 Act was intended to substantially reduce and diminish the value of retirement benefits achievable by the 2009 vested employees.

22. The 2009 Act will substantially reduce and diminish the value of retirement benefits achievable by the 2009 vested employees.
23. The 2009 Act substantially impairs contractual rights vested in the 2009 vested employees and constitutes a taking of property without just compensation.
24. Plaintiffs are entitled to a declaratory judgment pursuant to R.I.Gen.Laws §9-30-1 that the 2009 Act is unconstitutional and in violation of Article I Sections 12 (Contract Clause) and 16 (Takings Clause) of the Rhode Island Constitution.
25. Among the membership of each of the plaintiffs are state employees and public school teachers who, on June 12, 2010, had at least ten (10) years of contributory service and were entitled to the benefits of retirement upon reaching the standards for retirement but who did not satisfy the standards for retirement as they existed on June 12, 2010. Plaintiffs bring this action in their representative capacity on behalf of these employees, hereinafter referred to as “the 2010 vested employees.”
26. In 2010, the General Assembly of the State of Rhode Island enacted Public Law 2010, chapter 23, Article 16 (“Relating to Pension Reform”), hereinafter “the 2010 Act,” which, upon information and belief, substantially reduced the availability and amount of the cost of living adjustment (“COLA”) available to the 2010 vested employees, to their substantial injury. Among other things:
  - a. The 2010 Act caps the availability of the COLA to apply only to the first \$35,000.00 of retirement allowance;
  - b. The 2010 Act substantially postpones the commencement of the COLA for some of the 2010 vested employees.
27. The 2010 Act was intended to substantially reduce and diminish the value of retirement

benefits achievable by the 2010 vested employees.

28. The 2010 Act will substantially reduce and diminish the value of retirement benefits achievable by the 2010 vested employees.
29. The 2010 Act substantially impairs contractual rights vested in the 2010 vested employees and constitutes a taking of property without just compensation.
30. Plaintiffs are entitled to a declaratory judgment pursuant to R.I.Gen.Laws §9-30-1 that the 2010 Act is unconstitutional and in violation of Article I Sections 12 (Contract Clause) and 16 (Takings Clause) of the Rhode Island Constitution.
31. Plaintiffs have no adequate remedy at law.

**Count I (Contract Clause of the Rhode Island Constitution, Art. I Section 12)**

32. Paragraphs 1 through 31 are incorporated herein as if restated in full.
33. The 2009 Act, in substantially impairing the contract rights of the 2009 vested employees, contravenes the Contract Clause of the Rhode Island Constitution, Article I Section 12 and should be declared unconstitutional and its operations enjoined.
34. The 2010 Act, in substantially impairing the contract rights of the 2010 vested employees, contravenes the Contract Clause of the Rhode Island Constitution, Article I Section 12 and should be declared unconstitutional and its operations enjoined.

**Count II (Takings Clause of the Rhode Island Constitution, Art. I Section 16)**

35. Paragraphs 1 through 31 are incorporated herein as if restated in full.
36. The 2009 Act, in substantially impairing the contract rights of the 2009 vested employees, contravenes the Takings Clause of the Rhode Island Constitution, Article I Section 16 and should be declared unconstitutional and its operations enjoined.
37. The 2010 Act, in substantially impairing the contract rights of the 2010 vested employees,

contravenes the Takings Clause of the Rhode Island Constitution, Article I Section 16 and should be declared unconstitutional and its operations enjoined.

WHEREFORE, plaintiffs respectfully pray that the Court:

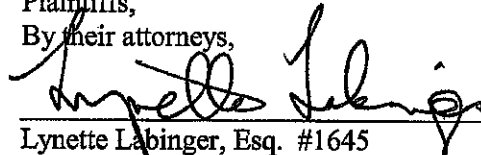
- a. Issue declaratory judgment declaring that Public Law 2009, chapter 68, insofar as it purports to amend Rhode Island General Laws chapters 16-16 and 36-10, contravenes the Contract and Takings Clauses of the Rhode Island Constitution, Article I Sections 12 and 16;
- b. Issue declaratory judgment declaring that Public Law 2010, chapter 23, insofar as it purports to amend Rhode Island General Laws chapters 16-16 and 36-10, contravenes the Contract and Takings Clauses of the Rhode Island Constitution, Article I Sections 12 and 16;
- c. Issue equitable relief including, but not limited to, a permanent injunction prohibiting the State, including the Employees' Retirement System of the State of Rhode Island and the Retirement Board, from relying upon or applying the provisions of Public Law 2009, chapter 68, insofar as it purports to amend Rhode Island General Laws chapters 16-16 and 36-10, to state employees or public school teachers with at least ten years of contributory service on September 30, 2009, and to restore and make whole all retirement benefits diminished by application thereof;
- d. Issue equitable relief including, but not limited to, a permanent injunction prohibiting the State, including the Employees' Retirement System of the State of Rhode Island and the Retirement Board, from relying upon or applying the provisions of Public Law 2010, chapter 23, insofar as it purports to amend Rhode Island General Laws chapters 16-16 and 36-10, to state employees or public school teachers with at least

ten years of contributory service on June 12, 2010, and to restore and make whole all retirement benefits diminished by application thereof;

- e. Award plaintiffs the costs of the suit;
- f. Award such other and further relief as the Court deems necessary and proper.

Plaintiffs,

By their attorneys,



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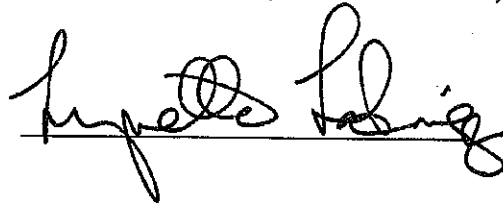
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### Certification

I hereby certify that on this the 21 day of July, 2010, a true copy of the within document was mailed, postage prepaid, and sent by e-mail to James Lee (JLee@riag.ri.gov), Assistant Attorney General, Office of the Attorney General, 150 South Main Street, Providence, RI 02903 and by e-mail to John Tarantino (jtarantino@apslaw.com), Adler Pollock & Sheehan P.C., One Citizens Plaza, 8th Floor, Providence, RI 02903.

A handwritten signature in black ink, appearing to read "James Lee", written over a horizontal line.