Supreme Court of Florida

No. SC12-520

RICK SCOTT, et al.,
Appellants,

vs.

GEORGE WILLIAMS, et al.,
Appellees.

[January 17, 2013]

LABARGA, J.

Appellants Governor Rick Scott, Attorney General Pamela Jo Bondi, and Chief Financial Officer Jeff Atwater, in their capacity as the State Board of Administration of Florida, and John Miles, Secretary of the Department of Management Services of Florida, appealed a judgment of the Circuit Court of the Second Judicial Circuit in and for Leon County to the First District Court of Appeal, which certified to this Court that the appeal is one presenting issues of great public importance that require immediate resolution by this Court. We have jurisdiction. See art. V, § 3(b)(5), Fla. Const.

In this case, we consider the constitutionality of certain provisions of chapter 2011-68, Laws of Florida, enacting Senate Bill 2100, which as of July 1, 2011, converted the Florida Retirement System (FRS) from noncontributory by employees to contributory, required all current FRS members to contribute 3% of their salaries to the retirement system, and eliminated the retirement cost-of-living adjustment for creditable service after the effective date of the act.[1] The circuit court held that these amendments violated three separate provisions of the Florida Constitution—article I, section 10, which prohibits laws impairing the obligation of contracts; article X, section 6, which provides that no private property shall be taken except for a public purpose and with full compensation paid therefor; and article I, section 6, providing that the right of public employees to bargain collectively shall not be denied or abridged. Based on these rulings, the circuit court held the challenged amendments to be unconstitutional and ordered the appellants to reimburse, with interest, all funds deducted or withheld pursuant to

1. According to the Department of Management Services Division of Retirement "Participating Employers 2011" publication contained in the record below, those employers participating in the FRS in 2011 included: 55 state agencies; 396 county agencies; 67 school boards; 28 community colleges; 185 cities, 6 independent hospitals, 243 special districts (these last three categories include the 26 cities, 5 independent hospitals, and 12 independent districts that are closed to new members as of January 1, 1996); and 12 other public employers not specifically designated.

the challenged provisions from the compensation or cost-of-living adjustments of employees who were members of the FRS prior to July 1, 2011.

The appellants and supporting amici (for ease of reference collectively referred to herein as "the State") contend on appeal, as they did in the circuit court, that the laws are facially constitutional.[2] For the reasons explained below, we agree with the State and reverse the judgment of the circuit court based on our conclusion that the Legislature did not violate the Florida Constitution in enacting the challenged provisions of chapter 2011-68, Laws of Florida.

BACKGROUND

We begin with an overview of the challenged provisions of chapter 2011-68, Laws of Florida. Since 1975, until the July 1, 2011, effective date of the amendments at issue here, the FRS was noncontributory for most state and local employee members, meaning that the plan was funded entirely by public employer contributions. Further, prior to the 2011 amendments, the FRS plan provided for

2. The parties, intervenors, and amici curiae are numerous. In addition to appellants Governor Rick Scott, Attorney General Pamela Jo Bondi, and Chief Financial Officer Jeff Atwater, in their capacity as the State Board of Administration of Florida, John Miles, Secretary of the Department of Management Services of Florida, and appellee George Williams, the other appellees, intervenors, and amici curiae consist of a large number of state and local employees, various unions and employee organizations, the Florida Senate and the Florida House, the Florida Association of Counties, the Florida League of Cities, Florida TaxWatch Research Institute, Inc., and the National Conference on Public Employees Retirement Systems.

retired members to receive a cost-of-living adjustment (COLA) equal to 3% of the total monthly benefit, which was calculated once yearly. The plaintiffs and intervenors below challenged two facets of the 2011 pension amendments—the amendments contained in sections 5, 7, 9, 11, 13, 24, 26, 29, 32, 33, 39, and 40 of chapter 2011-68, Laws of Florida, requiring current state and local members of the FRS to pay 3% of their gross compensation into the pension plan, and the amendment contained in section 17 of chapter 2011-68, Laws of Florida, eliminating COLA adjustments for service performed by FRS members after June 30, 2011.[3]

The circuit court decided the case on cross motions for summary judgment based on a stipulation that there were no material facts in dispute. The facts that

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3. The amendment contained in section 17 of chapter 2011-68, Laws of Florida, completely eliminated the COLA for all service performed after the effective date of the act. For employees who were members of the FRS prior to July 1, 2011, their COLA will be calculated as follows: The COLA factor "shall equal the product of 3 percent multiplied by the quotient of the sum of the member's service credit earned for service before July 1, 2011, divided by the sum of the member's total service credit earned." Ch. 2011-68, § 17, at 1053, Laws of Fla., amending section 121.101(4)(c), Florida Statutes. However, under the 2011 amendments, "[s]ubject to the availability of funding and the Legislature enacting sufficient employer contributions specifically for the purpose of funding the expiration of the cost-of-living adjustment specified in subsection (4), in accordance with s. 14, Art. X of the State Constitution, the cost-of-living adjustment formula provided for in subsection (4) shall expire effective June 30, 2016, and the benefit of each retiree and annuitant shall be adjusted on each July 1 thereafter, as provided in subsection (3)." See id. Section 121.101(3), as amended in 2011, continues to provide a 3% cost-of-living adjustment to those persons who retired prior to July 1, 2011.

the circuit court relied on included the fact that "the FRS has been operating well above the 80% funding ratio recommended by experts" and "according to the State Board of Administration, which is responsible for investing funds deposited in the FRS, the FRS is one of the 'most well-funded and healthiest public pension funds in the United States.' " The court's order also recognized the following undisputed facts: "Florida faced a budget shortfall of $3.6 billion at the start of the 2011 legislative session. The legislature calculated the savings to be achieved from the challenged portions of Senate Bill 2100 to be approximately $861 million. There was also record evidence, unrebutted, that the legislature's appropriations for 2011-2012 left nearly $1.2 billion in general revenue unspent for the year." The trial court also noted the fact that the amendments significantly reduced the employer contributions to the FRS and that the amendments were not enacted to make the FRS actuarially sound but were intended to respond to the State's projected budget shortfall.

With this factual backdrop, and relying primarily on the language contained in section 121.011(3)(d), Florida Statutes (1974), a provision known as the "preservation of rights" statute, the circuit court held that the rights of the members of the FRS to the noncontributory retirement plan with a COLA, which was in effect prior to the amendments, were contractual in nature, that they were legally enforceable as valid contract rights, and could not be abridged in any way. The

preservation of rights section, enacted in 1974 at the same time that the FRS was amended to be noncontributory for most public employees, provided then and continues to provide now as follows:

> (3) PRESERVATION OF RIGHTS.—
> . . . .
> (d) The rights of members of the retirement system established by this chapter shall not be impaired by virtue of the conversion of the Florida Retirement System to an employee noncontributory system. As of July 1, 1974, the rights of members of the retirement system established by this chapter are declared to be of a contractual nature, entered into between the member and the state, and such rights shall be legally enforceable as valid contract rights and shall not be abridged in any way.

See § 121.011(3)(d), Fla. Stat. (1974); § 121.011(3)(d), Fla. Stat. (2012); ch. 74-302, § 1, at 937, Laws of Fla. The circuit court held that the Legislature substantially breached the employees' contract rights guaranteed by the preservation of rights statute by requiring employee contributions to the FRS and by elimination of the COLA, and further held that this breach was not justified by the existence of a significant budget shortfall where other, reasonable alternatives existed to preserve the State's contract with FRS members.

In so ruling, the circuit court acknowledged this Court's 1981 decision in Florida Sheriffs Ass'n v. Department of Administration, 408 So. 2d 1033, 1037 (Fla. 1981), in which we held that the preservation of rights statute "vest[ed] all rights and benefits already earned under the present retirement plan" but did not preclude the Legislature from altering benefits prospectively for future state

service in the existing noncontributory plan. However, the circuit court concluded that the Florida Sheriffs decision did not allow the Legislature to "completely gut and create a new form of pension plan." Finally, the circuit court concluded that the challenged portions of chapter 2011-68, Laws of Florida, also effected an unconstitutional taking of private property without full compensation and abridged the rights of public employees to bargain collectively over conditions of employment, to wit, retirement benefits.

Thus, this case turns on the question of whether the challenged provisions of chapter 2011-68, Laws of Florida, violate the contracts clause, the takings clause, or the collective bargaining clause of the Florida Constitution. The State also challenges the refund remedy ordered by the trial court. We turn first to the applicable standards of review.

ANALYSIS

I. Standards of Review

Determination of whether a statute is constitutional is a pure question of law which is reviewed de novo. See Crist v. Ervin, 56 So. 3d 745, 747 (Fla. 2010). When the question involves both factual and legal issues, the Court will review a trial court's factual findings for competent, substantial evidence, while the legal question is reviewed de novo. See N. Florida Women's Health and Counseling Serv., Inc. v. State, 866 So. 2d 612, 626-27 (Fla. 2003). Where there is no genuine

issue of material fact, this Court's review of a summary judgment is de novo. See Volusia Cnty. v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126, 130 (Fla. 2000). Thus, this Court's review of whether the challenged provisions of chapter 2011-68, Laws of Florida, when considered in light of the undisputed facts, unconstitutionally impair a contract with members of the Florida Retirement System, effect an unconstitutional taking from the members, or abridge the right of public employees to collectively bargain will be de novo. See also State v. Sigler, 967 So. 2d 835, 841 (Fla. 2007) (reviewing de novo the application of the statute to facts of the case to determine if the statute is constitutional).

We are ever mindful that "[w]hile we review decisions striking state statutes de novo, we are obligated to accord legislative acts a presumption of constitutionality and to construe challenged legislation to effect a constitutional outcome whenever possible." Fla. Dep't of Revenue v. Howard, 916 So. 2d 640, 642 (Fla. 2005). Statutes come to the Court "clothed with a presumption of constitutionality and must be construed whenever possible to effect a constitutional outcome." Crist v. Fla. Ass'n of Criminal Def. Lawyers, Inc., 978 So. 2d 134, 139 (Fla. 2008). "Absent a constitutional limitation, the Legislature's 'discretion reasonably exercised is the sole brake on the enactment of legislation.' " Id. at 141 (quoting Bush v. Holmes, 919 So. 2d 392, 406 (Fla. 2006) (quoting State v. Bd. of Pub. Instruction for Dade County, 170 So. 602, 606 (1936))). "[E]very

reasonable doubt should be resolved in favor of a law's constitutionality." Franklin v. State, 887 So. 2d 1063, 1080 (Fla. 2004). We note, however, that "pension statutes are to be liberally construed in favor of the intended recipients." Bd. of Trustees of Town of Lake Park Firefighters' Pension Plan v. Town of Lake Park, 966 So. 2d 448, 451 (Fla. 4th DCA 2007) (citing Greene v. Gray, 87 So. 2d 504, 507 (Fla. 1956)).

Further, we have long recognized that "[t]he court should not declare a statute to be void or inoperative on the ground that it is opposed to a spirit that is supposed to pervade the Constitution, or because the statute is considered unjust or unwise or impolitic." State ex. rel. Johnson v. Johns, 109 So. 228, 231 (Fla. 1926). "The wisdom, policy, or motives which prompt a legislative enactment, so far as they do not contravene some portion of the express or implied limitation upon legislative power found in the Constitution, are not subject to judicial control." State ex rel. Davis v. Rose, 122 So. 225, 231 (Fla. 1929). Thus, our ruling today expresses no view as to the wisdom, policy, or motives behind the challenged statutory provisions.

Our decision turns in significant part on determining if the contract rights granted by the preservation of rights statute, section 121.011(3)(d), include the right to a continuing noncontributory retirement plan with a COLA for those employees who were members of the FRS prior to July 1, 2011, and whether those

rights, if any, have been impaired in violation of the Florida Constitution by the challenged amendments. In determining the question of unconstitutional contract impairment in Florida, where a contract has been found to exist and to have been impaired by subsequent legislation, this Court in Pomponio v. Claridge of Pompano Condominium, Inc., 378 So. 2d 774 (Fla. 1979), adopted a balancing approach to determine if a statute unconstitutionally impairs a contract. We recognized in Pomponio that "virtually no degree of impairment" will be tolerated, id. at 780, but "allow[ed] the court to consider the actual effect of the provision on the contract and to balance a party's interest in not having the contract impaired against the State's source of authority and the evil sought to be remedied." Florida Ins. Guar. Ass'n, Inc. v. Devon Neighborhood Ass'n, Inc., 67 So. 3d 187, 193 n.6 (Fla. 2011) (citing Pomponio, 378 So. 2d at 780).

Where, as here, the contract at issue is with a governmental entity, the Supreme Court in U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1 (1977), explained:

> As with laws impairing the obligations of private contracts, an impairment may be constitutional if it is reasonable and necessary to serve an important public purpose. In applying this standard, however, complete deference to a legislative assessment of reasonableness and necessity is not appropriate because the State's self-interest is at stake. A governmental entity can always find a use for extra money, especially when taxes do not have to be raised. If a State could reduce its financial obligations whenever it wanted to spend the money for what it regarded as an important public purpose, the Contract Clause would provide no protection at all.

Id. at 25-26 (emphasis added; footnote omitted). "[A] State is not completely free to consider impairing the obligations of its own contracts on a par with other policy alternatives" and "is not free to impose a drastic impairment when an evident and more moderate course would serve its purposes equally well." Id. at 30-31. The government's significant impairment of its own contract is not justified by necessity if "the State[] could have adopted alternative means" of achieving its goals without altering the contract rights. See id. at 30.

With these principles in mind, we turn next to the question of whether the 2011 amendments unconstitutionally impair the contract rights of existing members of the Florida Retirement System. We then discuss whether the amendments effect an unconstitutional taking and whether the amendments impair constitutionally guaranteed rights to collectively bargain concerning pension issues.

II. Impairment of Contract and Unconstitutional Taking

The State contends that the 2011 amendments to the FRS operate prospectively only and, thus, the trial court's order finding that the law impairs existing contract rights of current members of the FRS is inconsistent with this Court's interpretation of the preservation of rights statute in Florida Sheriffs. Both parties agree that if an existing member of the FRS retired on June 30, 2011, none of his or her benefits would be diminished. Both parties agree that an employee

continuing on in employment will be required to contribute 3% of his or her gross compensation to the FRS in order to receive the same retirement benefit that he or she would have expected to receive, absent the amendments, without making any contribution. Further, the amendments provide that upon retirement, any right to a COLA is limited to a calculation giving credit only for the employee's service performed prior to July 1, 2011. It is for these employees who continue on in employment after June 30, 2011, that the parties' characterization of their rights and benefits diverge.

The State contends that because the 3% contribution requirement and the elimination of the COLA did not take effect until July 1, 2011, and did not diminish any benefits earned as of that date, the amendments were purely prospective. The appellees and supporting amici (referred to hereafter as "the challengers") contend that the employees' contractual right to have their retirement benefits calculated under the law in effect prior to July 1, 2011, vested pursuant to the preservation of rights statute upon commencement of their employment and that those rights are now impaired by the amendments. It is contended, without dispute, that even though the actual changes in the plan occur at a future date, the changes diminish the total expected retirement benefits that could have accrued over the entire projected life of a member's employment for those persons employed prior to the amendments who continue their employment after the

amendments. Thus, the challengers contend, the rights to a noncontributory plan and to a continuing COLA were part of the contract established under section 121.011, Florida Statutes (1974), as it has been continually enacted, and are rights to be honored over the life of their employment with the State.

The trial court agreed with the challengers that the rights to a noncontributory plan and a continuing COLA based on all years worked, both pre-amendment and post-amendment, are rights that were contractually guaranteed upon commencement of employment and could not be altered for any portion of the member's employment without impairing that contract. Although the trial court also recognized that this Court's decision in Florida Sheriffs authorized prospective amendments to the retirement plan, the court found that it did so only within the context of the existing noncontributory plan. Therefore, a review of our decision in Florida Sheriffs is necessary for our determination of these issues.

In Florida Sheriffs, special-risk law enforcement members of the FRS filed suit challenging the constitutionality of sections 121.091(1)(a) and (11), Florida Statutes (1979). See 408 So. 2d at 1034. Those provisions reduced, prospectively, the special-risk credit that the members would earn toward retirement from 3% to 2%. The plaintiffs in Florida Sheriffs contended that the Legislature was contractually bound to the three percent credit by its prior enactment of the preservation of rights provision in section 121.011(3)(d), Florida Statutes (1974).

They characterized the preservation of rights statute as elevating Florida's retirement system to a binding contractual relationship between employees and the State, thereby contractually barring the State from reducing the special-risk credit for those employees. See id. at 1034-35.

As noted earlier, the preservation of rights provision contained in section 121.011(3)(d), provides in pertinent part that "[a]s of July 1, 1974, the rights of members of the retirement system established by this chapter are declared to be of a contractual nature, entered into between the member and the state, and such rights shall be legally enforceable as valid contract rights and shall not be abridged in any way." § 121.011(3)(d), Fla. Stat. In deciding Florida Sheriffs, we were required to determine the contractual rights which were created by this preservation of rights statute. In order to ascertain the Legislature's intent in enacting that provision, we examined the case law in effect prior to its enactment. We first noted in Florida Sheriffs that long before the enactment of the preservation of rights statute, this Court had held that Florida's constitutional contracts clause "did not protect a governmental mandatory retirement system and that the legislature could modify or alter benefits provided by such a retirement plan." Id. at 1035 (citing Anders v. Nicholson, 150 So. 639 (1933)). We also discussed the early case of State ex rel. Holton v. City of Tampa, 159 So. 292 (Fla. 1934), in which this Court held that "even where an employee had already retired,

the legislature had the authority to reduce the retirement benefits under a mandatory plan." Florida Sheriffs, 408 So. 2d at 1036 (citing Holton, 159 So. at 293). The Holton Court stated: "But except in a case admitting of no other construction, a statutory retirement provision will not be construed as a contractual limitation binding on the legislative prerogative to fix the amount of retirement pay from time to time, so long as entire deprivation is not thereby attempted under the guise of regulation of the amount of compensation." Holton, 159 So. at 293.

In our analysis in Florida Sheriffs, we also considered the case of Voorhees v. City of Miami, 199 So. 313, 315 (Fla. 1940), where active employees of the City of Miami who were entitled to retirement benefits under the City's mandatory retirement act brought an action challenging an amendatory act that repealed the original retirement plan and substituted a new one in its place, which was binding on all participants in the original pension plan. We stated in Voorhees that the rights of such persons in a pension fund "are not such as will prevent the Legislature from repealing or amending the statute, merely because the officer or employee has contributed to the fund so long as the fund existed and the law stood unrepealed." Voorhees, 199 So. at 315 (quoting Holton, 159 So. at 292-93). Thus, we concluded in Florida Sheriffs, "[u]nder the prior case law, if the retirement system was mandatory as it is now, the legislature could at any time alter the benefits retroactively or prospectively for active employees." 408 So. 2d at 1037.

It was against this backdrop of precedent that allowed both prospective and retroactive changes to retirement benefits already earned under a mandatory retirement plan that the Legislature enacted the preservation of rights statute in 1974 to expressly create contract rights for existing members of the retirement system. We concluded in Florida Sheriffs that the preservation of rights provision "does alter the Anders-Holton rationale for benefits already earned by active employees up to the time the legislature changes the law." Id. at 1037. We explained: "That rule of law has now been changed by the 'preservation of rights' section which modifies the Voorhees rule and vests all rights and benefits already earned under the present retirement plan so that the legislature may now only alter retirement benefits prospectively." Florida Sheriffs, 408 So. 2d at 1037 (first emphasis added). Importantly, we cautioned in Florida Sheriffs as follows:

> We stress that the rights provision was not intended to bind future legislatures from prospectively altering benefits which accrue for future state service. To hold otherwise would mean that no future legislature could in any way alter future benefits of active employees for future services, except in a manner favorable to the employee. This view would, in effect, impose on the state the permanent responsibility for maintaining a retirement plan which could never be amended or repealed irrespective of the fiscal condition of this state. Such a decision could lead to fiscal irresponsibility. It would also impose on state employees an inflexible plan which would prohibit the legislature from modifying the plan in a way that would be beneficial to a majority of employees, but would not be beneficial to a minority. Since two different plans cannot exist for the same type of employee, the implementation of appellants' contention would also bind the legislature to this plan for future employees. We find appellants' contention is not in accordance with the intent of the

> legislature and conclude that the legislature has the authority to modify or alter prospectively the mandatory, noncontributory retirement plan for active state employees.

Florida Sheriffs, 408 So. 2d at 1037 (emphasis added). It is the import of this last statement, recognizing legislative power to modify prospectively "the mandatory, noncontributory retirement plan," that is at the heart of the challengers' claim. The challengers contend that the reference to "the authority to modify or alter prospectively the mandatory, noncontributory retirement plan" means that the Legislature may alter features of the plan prospectively, but only within the context of it remaining a noncontributory plan.

The trial court in the present case agreed and concluded that Florida Sheriffs did not control the question of contractual impairment in the instant case because the amendments in this case changed the fundamental nature of the plan from noncontributory to contributory. The trial court concluded:

> While Sheriffs does authorize the legislature to make prospective alterations to benefits which accrue for future state service within the "mandatory, noncontributory retirement plan," absolutely nothing in it can be read as authorizing the legislature to change the fundamental nature of the plan itself.

The challengers and the trial court are incorrect in concluding that we intended our decision in Florida Sheriffs to apply only to prospective changes within a noncontributory plan. A reading of the entire decision discloses our conclusion that the preservation of rights statute was enacted to give contractual protection to

those retirement benefits already earned as of the date of any amendments to the plan. We recognized the authority of the Legislature to amend a retirement plan prospectively, so long as any benefits tied to service performed prior to the amendment date are not lost or impaired. Moreover, we took special care in Florida Sheriffs to emphasize that our construction of the preservation of rights statute not be interpreted as binding future legislatures. The challengers have invited this Court to recede from Florida Sheriffs, but we decline to do so.

We again hold, as we did in Florida Sheriffs, that the preservation of rights statute was not intended to bind future legislatures from prospectively altering benefits for future service performed by all members of the FRS. We further hold that the 2011 amendments requiring a 3% employee contribution as of July 1, 2011, and continuing thereafter, and the elimination of the COLA for service performed after that date are prospective changes within the authority of the Legislature to make. The preservation of rights statute does not create binding contract rights for existing employees to future retirement benefits based upon the FRS plan that was in place prior to July 1, 2011. As we held in Florida Sheriffs, we again hold that the actions of the Legislature have not impaired any statutorily created contract rights and, thus, we reverse the judgment of the trial court on this ground. Further, because we conclude that no contract between the State and members of the FRS has been breached, we also reverse the trial court's judgment

that a breach of contract effected an unconstitutional taking under article X, section 6, of the Florida Constitution.[4] We turn next to determine if the challenged amendments impair or abridge the rights of public employees to collectively bargain that are guaranteed by article I, section 6, of the Florida Constitution.

III. Collective Bargaining

The challengers contended in the trial court and now on appeal that the amendments requiring a 3% salary contribution and elimination of the COLA for service performed after June 30, 2011, unconstitutionally impair or abridge the right of public employees to bargain collectively on the issue of retirement benefits. The trial court agreed and held that the amendments abridge article I, section 6, of the Florida Constitution by effectively removing the subject of retirement from the collective bargaining process and rendering negotiations after the fact futile. We make clear at the outset that there is no proper claim before the Court in this appeal that the amendments violate any specific collective bargaining agreement; the trial court's order did not address the effect of the amendments on any specific collective bargaining agreement. The issue before that court, and the issue now on appeal, is whether the amendments on their face unconstitutionally

4. However, we note that an unconstitutional taking may not be presumed based solely on a breach of contract. See, e.g., Connolly v. Pension Ben. Guar. Corp., 475 U.S. 211, 224 (1986) ("[T]he fact that legislation disregards or destroys existing contractual rights does not always transform the regulation into an illegal taking.").

impair or abridge collective bargaining rights by precluding effective bargaining on the issue of retirement pensions and benefits. The trial court was correct that retirement pensions and benefits are mandatory subjects of public collective bargaining. See City of Tallahassee v. PERC, 393 So. 2d 1147, 1150 (Fla. 1st DCA 1981), aff'd 410 So. 2d 487 (Fla. 1981). The right to collectively bargain, which is guaranteed to both public and private employees in Florida, is set forth in article I, section 6, of the Florida Constitution, which states in pertinent part:

> The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

Art. I, § 6, Fla. Const. The trial court concluded that the amendments at issue violate this provision.

In its initial brief on appeal, the State contends that "the Order was incorrect in stating that the Plan Amendment 'effectively remov[ed] the subject of retirement from the collective bargaining process.' The Plan Amendment does not remove the subject of retirement benefits from collective bargaining." (Appellant's Initial Brief at 27-28.) The State reiterated in its brief that "absolutely nothing precludes Plaintiffs from bargaining over FRS" and "the Plan Amendment does not prohibit government employees from engaging in collective bargaining over retirement benefits." (Appellant's Initial Brief at 25). We agree. Nothing in chapter 2011-68, Laws of Florida, prohibits public employees from collectively bargaining on

the issue of retirement pensions or benefits. Nor can we conclude on appeal, in a facial challenge to the amendments, that "effective" collective bargaining has been abridged or impaired on those issues, or that the amendments render such bargaining "futile" as contended by the challengers. Because we conclude that the amendments, on their face, do not prohibit collective bargaining on issues of retirement, we do not reach the State's argument that the Legislature may limit the right to collective bargaining on retirement issues based on the principle of separation of powers and the Legislature's exclusive control over public funds. See art. VII, §1(c), Fla. Const.[5]

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5. We agree with the State that in State v. Florida Police Benevolent Ass'n, Inc., 613 So. 2d 415, 421 (Fla. 1992), we held that, under its power of appropriation, the Legislature could permissibly fail to fund benefits agreed to in a collective bargaining agreement. However, the issue in this case does not involve an appropriations act that failed to fund a bargained-for retirement benefit. The issue here is whether the amendments prohibit, or render futile, collective bargaining on the issue of retirement in the first instance. Where the Legislature has expressly prohibited collective bargaining, we have held those laws unconstitutional. See, e.g., Chiles v. State Emp. Attorneys Guild, 734 So. 2d 1030, 1031 (Fla. 1999) (invalidating "a wholesale ban on collective bargaining by government lawyers"); City of Tallahassee v. Public Emp. Relations Comm'n, 410 So. 2d 487, 489 (Fla. 1981) (invalidating statute prohibiting bargaining over retirement benefits); Hillsborough Cnty. Governmental Emp. Ass'n, Inc. v. Hillsborough Aviation Auth., 522 So. 2d 358, 362 (Fla. 1988) (holding that section 447.309(3), Florida Statutes (1985), unconstitutionally impaired the constitutional right to "effective" collective bargaining because a portion of the statute provided that collective bargaining agreements do not become effective unless and until the appropriate governmental body makes necessary amendments to its rules and ordinances in accord with the agreement).

Accordingly, based on the foregoing analysis, we reverse the judgment of the trial court in which it held that the challenged amendments impair or abridge collective bargaining rights guaranteed to public employees by article I, section 6, of the Florida Constitution.

CONCLUSION

For all the reasons set forth above, we reverse the judgment of the trial court in its entirety. We hold that the challenged provisions, sections 5, 7, 9, 11, 13, 17, 24, 26, 29, 32, 33, 39, and 40 of chapter 2011-68, Laws of Florida, are facially constitutional.[6]

It is so ordered.

POLSTON, C.J., and PARIENTE, CANADY, and LABARGA, JJ., concur.
PARIENTE, J., concurs with an opinion, in which CANADY and LABARGA, JJ., concur.
LEWIS, J., dissents with an opinion.
PERRY, J., dissents with an opinion, in which LEWIS and QUINCE, JJ., concur.

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6. The following Florida statutes were amended, in pertinent part, by the sections of chapter 2011-68, Laws of Florida, held here to be constitutional: Section 5 amending § 121.011, Fla. Stat. (2010); section 7 amending § 121.051, Fla. Stat. (2010); section 9 amending § 121.052, Fla. Stat. (2010); section 11 amending § 121.055, Fla. Stat. (2010); section 13 amending § 121.071, Fla. Stat. (2010); section 17 amending § 121.101, Fla. Stat. (2010); section 24 amending § 121.35, Fla. Stat. (2010); section 26 amending § 121.4501, Fla. Stat. (2010); section 29 amending § 121.571, Fla. Stat. (2010); section 32 amending § 121.70, Fla. Stat. (2010); section 33 amending § 121.71, Fla. Stat. (2010); section 39 amending § 121.78, Fla. Stat. (2010); and section 40 amending § 1012.875, Fla. Stat. (2010).

On the Court's own motion, any motion for rehearing shall be filed no later than January 25, 2013. See Fla. R. App. P. 9.330(a). Any response to a motion for rehearing must be filed no later than January 30, 2013. No reply to the response shall be permitted. The provisions of Florida Rule of Appellate Procedure 9.420(f) are suspended.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

PARIENTE, J., concurring.

I fully concur in the majority's opinion but write separately to emphasize several points. First, although I understand the frustration of State employees, who have in effect taken a 3% pay-cut in addition to years without cost-of-living adjustments, this case is not about the wisdom or fairness of the Legislature's decision. Nor is it about the necessity of the Legislature's action or whether the Legislature had reasonable alternatives to accomplish its goal.[7] Such considerations would become relevant to our analysis only if the Legislature's decision constituted an impairment of contract. At that point, the inquiry would then become whether the impairment is unconstitutional, which is an analysis that focuses on the necessity of the legislative action. Because the majority correctly

7. As to the reasonable alternatives, although it does not affect our resolution of the issue in this case, I note that the appellees concede that the Legislature could have simply reduced the pay of State employees by 3% across the board without any constitutional prohibition. I point this out because I believe it highlights that the issue before this Court is not the propriety of the Legislature's policy choice or an assessment of all the options available to the Legislature, but simply whether the Legislature's decision passes constitutional muster.

concludes that the changes at issue do not constitute an impairment of contract, however, those considerations do not factor into our analysis in this case. Simply put, it is not this Court's role to question policy decisions made by the Legislature unless those decisions infringe on rights guaranteed by either the Florida or United States Constitutions.

Second, the result reached by the majority is dictated both by our precedent in Florida Sheriffs and by a careful reading of the preservation of rights statute. Although Florida Sheriffs does make reference to a "non-contributory" plan in the statements of its holding and does not address a change such as this one, its rationale clearly applies here. Prior to the enactment of the preservation of rights statute in 1974, the Legislature could make both retroactive and prospective changes to a mandatory retirement plan. See Fla. Sheriffs Ass'n v. Dep't of Admin., Div. of Ret., 408 So. 2d 1033, 1037 (Fla. 1981) ("Under the prior case law, if the retirement system was mandatory as it is now, the legislature could at any time alter the benefits retroactively or prospectively for active employees."). This Court in Florida Sheriffs concluded that this rule was "changed by the 'preservation of rights' section which . . . vests all rights and benefits already earned under the present retirement plan so that the legislature may now only alter retirement benefits prospectively." Id. The Court stressed that "the rights provision was not intended to bind future legislatures from prospectively altering

benefits which accrue for future state service." Id. To hold otherwise would "impose on the state the permanent responsibility for maintaining a retirement plan which could never be amended or repealed irrespective of the fiscal condition of this state." Id.

In interpreting the effect of the preservation of rights statute in Florida Sheriffs, this Court's reasoning did not involve drawing the distinction advanced by the dissenting opinions with respect to the contributory or noncontributory nature of the plan. Nor did the Court's analysis distinguish the types or nature of changes the Legislature could make prospectively. In fact, the Court referred to the ability to "repeal" the plan prospectively under the preservation of rights statute. Id. This Court's decision in Florida Sheriffs is clearly binding here, and to hold that the Legislature's changes constituted an impairment of contract rights would require us to recede from Florida Sheriffs.

Finally, even if this Court were to recede from Florida Sheriffs, the preservation of rights statute still compels the result reached by the majority. There is nothing in the statute that indicates a legislative intent to bind itself for all time to preclude future legislatures from ever altering the future benefits to be paid to employees as part of the state retirement system. As correctly held in Florida Sheriffs, this interpretation would be contrary to the Legislature's intent as well as the logical meaning of the statute, which is to ensure that the Legislature cannot

retroactively alter accrued benefits. This is a critical statutory guarantee that is far different from the conclusion that the Legislature intended to bind itself to never prospectively alter retirement benefits.

If this Court were to read the statute to preclude prospective changes such as the ones at issue here, then the Legislature would in effect be precluded from making any changes to the retirement plan without impairing contracts. Nothing in the statute contains the distinctions urged by the dissents between fundamental and non-fundamental changes or between changes that occur "within" the plan or that alter the "nature of the plan itself." Dissenting op. at 32 (Lewis, J.) (emphasis omitted). Indeed, the Legislature has made numerous prospective changes to the retirement system over the years, including the reduction of the special risk credit at issue in Florida Sheriffs. In short, as recognized by Florida Sheriffs, the preservation of rights statute accomplished something very important and significant for State employees—it precluded the Legislature from making retroactive changes to a mandatory retirement system, which were previously allowed. Certainly such a change is not "wholly illusory" as Justice Lewis's dissent contends. Dissenting op. at 31 (Lewis, J.).

Ultimately, I recognize the frustration of State employees who have in effect experienced a 3% reduction in their net pay as a result of the Legislature's changes to the retirement plan. Indeed, these changes affect judges and all judicial branch

employees as well. However, this case is not a referendum on the Legislature's policy decision. It is not this Court's role to express any position on that issue. Instead, as the majority has ably done, it is this Court's task to carefully analyze and determine whether the Legislature has acted within its constitutional limits. Because Florida Sheriffs and the preservation of rights statute necessitate the conclusion that the Legislature is not constitutionally prohibited from making prospective changes to the mandatory state retirement plan, I believe it is clear that the trial court's judgment must be reversed.

CANADY and LABARGA, JJ., concur.

LEWIS, J., dissenting.

I agree with Justice Perry and, in my view, this case turns in large part on the legal effect of section 121.011(3), Florida Statutes (2010). Section 121.011(3), as it existed prior to the amendment that has generated this litigation, provided:

> 121.011 Florida Retirement System.—
> . . . .
> (3) PRESERVATION OF RIGHTS.—
>
> (a) The rights of members of the retirement systems established by chapters 122, 238, and 321 shall not be impaired, nor shall their benefits be reduced by virtue of any part of this chapter, except that if an eligible member of a retirement system established by chapter 122, chapter 238, or chapter 321, elects between April 15, 1971, and June 1, 1971, inclusive, to transfer to the Florida Retirement System, he or she shall be transferred to the Florida Retirement System on June 1, 1971, and shall be subject to the provisions of the Florida Retirement

> System established by this chapter and at retirement have his or her benefits calculated in accordance with the provisions of s. 121.091.
>
> (b) The rights of members of any retirement system established by local or special act or municipal ordinance shall not be impaired, nor shall their benefits be reduced by virtue of any part of this chapter.
>
> . . . .
>
> (d) The rights of members of the retirement system established by this chapter shall not be impaired by virtue of the conversion of the Florida Retirement System to an employee noncontributory system. As of July 1, 1974, the rights of members of the retirement system established by this chapter are declared to be of a contractual nature, entered into between the member and the state, and such rights shall be legally enforceable as valid contract rights and shall not be abridged in any way.
>
> . . . .

§ 121.011(3) (a), (b) & (d), Fla. Stat. (2010). Subsection (d) was originally enacted in this same form effective October 1, 1974, see ch. 74-302, § 1, at 937, Laws of Fla., and has been continually reenacted each year since. Effective January 1, 1975, the FRS was converted to a noncontributory system. See ch. 74-302, §§ 4, 13, Laws of Fla.; § 121.071(2)(a), Fla. Stat. (1975). Prior to 2011, section 121.071 provided that contributions to the retirement system would be made only by the employers and none by the employees. The statute has meaning and must be given effect. This statutory provision, as with all others, cannot be simply ignored.

It is clear that in 1974, the Legislature changed the FRS to a mandatory, noncontributory pension system for most employees and enacted section 121.011(3)(d), the provision of critical concern. During the thirty-seven years

since the adoption of the preservation of rights provision, the FRS has remained noncontributory and has provided retirees a cost-of-living adjustment throughout retirement. The foregoing statutory provisions, of legislative origin, create and establish contractual rights and obligations with regard to the employment relationship of certain workers. We cannot become involved with the wisdom or judgment in establishing these rights just as we do not evaluate the wisdom of subsequently enacting statutory provisions that may be in conflict with earlier established law. The quoted statutory provisions are clearly and firmly part of Florida law just as any other legislation and we cannot simply ignore the earlier statutory rights in favor of later statutes which create conflict. This conflict impacts a significantly important category of Florida workers, our first responders, those who provide safety and security for all citizens, those who provide education and safety for our children, and thousands of other Floridians who provide essential services for all Floridians each and every day. These governmental employees are not second class citizens but are entitled to the full protection of the law just as all other Floridians enjoy. The contractual rights of government employees as established in the statute we consider today cannot receive lesser protection than other contractual rights because to do so would violate the "rule of law" and reduce all to the status of being subject to the whim of those who may be in power at any particular time and from time to time. The interpretation advanced

by Justice Pariente is certainly without support and contrary to logical analysis. Justice Pariente seeks to justify and bolster this approach by suggesting that the State may retroactively alter vested rights and change its obligations without statutory authority to the contrary. In my view, this is not supported by Florida or federal law in this context. Justice Pariente's entire opinion is based on her statement that there is no "impairment of contracts" here, a position with which I fundamentally and profoundly disagree.

Senate Bill 2100, which was passed in the 2011 legislative session and became effective July 1, 2011, changes the FRS in several pertinent respects, although most of the changes affect employees initially enrolled after the effective date of the new statute and are not challenged in this action. Two changes to the FRS made by the 2011 amendments that affect employees who were members of the FRS prior to the effective date of the enactment were challenged—the mandatory 3% contribution and the elimination of cost-of-living adjustment for service occurring after July 1, 2011, for preexisting employees. The legislation also decreases the amount employers must contribute to the FRS for the benefit of their employees by more than half for nearly every membership class.

The FRS has been operating well above the 80% funding ratio recommended by experts and according to the State Board of Administration, which is responsible for investing funds deposited in the FRS, the FRS is one of the most

well-funded and healthiest public pension funds in the United States. Florida faced a serious budget shortfall of approximately $3.6 billion at the start of the 2011 legislative session. The Legislature calculated the savings to be achieved from the challenged portions of Senate Bill 2100 to be approximately $861 million.

The unrebutted expert testimony establishes that the fiscal impact on the plaintiffs ranges from $12,445.81 to $329,683.56 over the span of their working years and retirement if they receive no future raises; and that the elimination of the COLA alone will result in a 4% to 24% reduction in the plaintiffs' total retirement income. Senate Bill 2100 does not provide any increased or improved retirement benefits. There was also record evidence, unrebutted, that the Legislature's appropriations for 2011-2012 left nearly $1.2 billion in general revenue unspent for the year.

Impairment of Contract

The circuit court concluded as a matter of law, and I agree, that it was required to follow the express language of section 121.011(3)(d), which cannot be read as allowing the Legislature to redefine established, unconditional contractual rights under Chapter 121 as suddenly tied to years of service and thereby altogether eliminated in the future. Such a reading would render the express contract created by section 121.011(3)(d) wholly illusory, contrary to the view of Justice Pariente. The trial court concluded, and I also agree, that this Court's decision in Florida

Sheriffs Ass'n v. Department of Administration, 408 So. 2d 1033 (Fla. 1981), authorizes the Legislature to make prospective alterations to benefits which accrue for future state service within the mandatory, noncontributory plan, but cannot be read as authorizing the Legislature to change the fundamental nature of the plan itself because the Legislature is precluded by section 121.011(3)(d) from abridging in any way the unconditional contractual rights of the plaintiffs. The trial court stated:

> The changes at issue here, a complete change of the plan from noncontributory to a contributory plan, and the elimination of entitlement to a cost-of-living adjustment, are qualitative changes to the plan, not changes to individual components of future accruals within the plan. FRS members have had continuous, unconditional rights to a noncontributory plan with a cost-of-living adjustment since the inception of FRS; these elements are not related to future state service. Because the Sheriffs case did not reach or contemplate changes such as these, this Court is bound to follow the express language of section 121.011(3)(d), Florida Statutes.

The trial court concluded, and I agree, that under State v. Gadsden County, 229 So. 2d 587 (Fla. 1969), the Legislature can, as part of its power to contract, authorize a contract which vests rights that a future legislature cannot impair; and the court below concluded that the Legislature did so when it adopted section 121.011(3)(d).

The challenged portions of Senate Bill 2100 impair vested contract rights, and such impairment is substantial, as considered in Pomponio v. Claridge of Pompano Condominium, Inc., 378 So. 2d 774, 779-80 (Fla. 1979). The facts here show the fiscal impact on individuals ranges from $12,445.81 to $329,683.56.

In Chiles v. United Faculty of Florida, 615 So. 2d 671, 673 (Fla. 1993), we held that before the Legislature can reduce previously approved appropriations to pay workers' salaries made pursuant to a collective bargaining agreement, there must be no other reasonable alternative means of preserving the contract with the public workers in whole or in part and the Legislature must demonstrate a compelling state interest. The State has failed to meet its burden under this test because facing a budget shortfall is not enough. The undisputed record here indicates that other reasonable alternatives existed to preserve the state's contract to the FRS, and the Legislature preserved $1.2 billion in unspent general revenue funds for the 2011-12 fiscal year. The trial court found that the Florida Legislature chose to effectuate the challenged provisions of Senate Bill 2100 in order to make funds available for other purposes. The trial court also concluded that there is no evidence that the integrity of the FRS was the basis for the Legislature's actions. The retirement benefits protected by contract, as established by the Legislature, were simply taken from our first responders, those who protect us, those who teach and protect our children and others who have provided us services every day, to be used for other purposes.

Under the Florida Constitution, the mandatory 3% contribution and the elimination of the cost-of-living adjustment violate article X, section 6, of the Florida Constitution because the requirements constitute a taking without full

compensation being paid to the owner of the property. Contract rights are property rights within the meaning of article X, section 6, based on U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 19 n.16 (1977). The taking of the members' money was done for the public purpose of balancing the state budget even though there is no evidence that the integrity of the FRS was the basis for this action. Senate Bill 2100 does not compensate the members for this taking and further prohibits the payment of interest on the contributions made by the member if the member leaves and requests return of the monies contributed.

Impairment of Collective Bargaining Rights

The right of public employees to bargain collectively over wages, hours, and other terms and conditions of employment, which right is also constitutionally protected by article I, section 6, of the Florida Constitution, is abridged by Senate Bill 2100, which effectively removes those issues from the collective bargaining process, thereby rendering those negotiations after the fact futile. Retirement pensions and benefits are mandatory subjects of collective bargaining and include the right to effective bargaining. City of Tallahassee v. Pub. Emp. Relations Comm'n, 410 So. 2d 487 (Fla. 1981); Hillsborough Cty. Gov't Employees Ass'n v. Hillsborough Cty. Aviation Auth., 522 So. 2d 358 (Fla. 1988). There is no legal authority authorizing the Legislature to unilaterally change a mandatory subject of

collective bargaining in substantive legislation and there is no compelling state interest shown to support such action.

After the circuit court held the provisions of chapter 2011-68 (enacting Senate Bill 2100) unconstitutional on the foregoing grounds, the court then permanently enjoined the State from implementing the provisions as to individuals such as the plaintiffs, and ordered reimbursement with interest of the funds withheld from the compensation or cost-of-living adjustments of all public employees who were members of FRS prior to July 1, 2011.

No motion for rehearing was filed by the State raising a claim that the remedy was improper or that it failed to provide sufficient flexibility to the State to determine the source and timing of refunds. It might also be noted that when the State appeared at the preliminary injunction hearing early in the litigation, at the time the case was proceeding as a possible class action, the State did not indicate any special problems would arise in determining the source for a refund if a refund was ordered. Instead, the State assured the court that the refund money would be made available.

All public employees including teachers, first responders, deputies, correctional officers, nurses, and social workers who were members of the FRS prior to July 1, 2011 have had their contract rights violated. The qualitative changes to the FRS in Senate Bill 2100 that not only reduce the amount of ultimate

benefits but also change the method of calculating them are entirely unlike the changes at issue in Florida Sheriffs upon which the majority relies. Florida Sheriffs simply does not govern the present case. Furthermore, because the changes in Senate Bill 2100 substantially reduce the public employees' lifetime retirement benefits, the changes constitute an impermissible retroactive impairment as a matter of law. This Court should recede from Florida Sheriffs or limit the decision to its facts because it is unsound in principle and there has been no detrimental reliance upon the decision. The Court's interpretation of the statute in Florida Sheriffs is contrary to the plain, unambiguous language of the statute we must apply. The statute evinces a clear intent to create a contract protecting a member's overall retirement rights and does not limit that protection to "accrued" or "earned" rights. Those terms are not contained in the statute. Additionally, pre-Florida Sheriffs precedent cannot properly be used as a basis to depart from the clear language of the statute. Because of the fundamental contract right involved, the unsoundness of the Florida Sheriffs decision, and the lack of substantial reliance, the Court should recede from Florida Sheriffs or limit it to its facts, adhere to the plain language of Section 121.011(3)(d), and find that the statute creates a binding contract that precludes changing the rights of FRS members unless the change is permissible under the test for impairment of contract.

The Legislature asserts a view of the history of the law not argued by the State below. The only relevant legislative history from 1974 cited by the parties is the committee report cited by the public employees. See H.R. Comm. on Retirement, Personnel and Claims, Legislative Program Overview, (June 24, 1974) (available at Fla. Dep't of State, Florida State Archives). In discussing section 121.011(3)(d), the Committee stated that this section was included to "help alleviate the fears of certain members . . . that once the system was made non-contributory, the Legislature would feel free to change retirement benefits since the employee was no longer contributing to the system." Regardless, the language in section 121.011(3)(d) is clear and unequivocal. The contract rights in that statute have not been limited to accrued benefits. Section 121.011(3)(d) states that the relationship between the member and the State is "contractual in nature," grants "valid contract rights" which are "legally enforceable," and cannot be "abridged in any way." This statutory language evinces an unmistakable intent to bind the state contractually.

The state action we consider today constitutes a taking of private property without compensation. The constitutional takings clause is to prevent the government from forcing some people alone to bear a burden that should be shared. The state action here constitutes a confiscation of private property of a few for a public use. The State's contention that there is no taking because the

contributions "are applied to [the members'] own retirement" reflects a misunderstanding of the nature of the property rights protected under section 121.011(3)(d). This provision grants public employees enforceable rights to a noncontributory retirement plan with a COLA; thus, the taking of those rights without any offsetting benefit constitutes a taking. Even to the extent member contributions are "to be used for the members' own retirement" (which is true for the Investment Plan but not for the Pension Plan or the COLA), they do not constitute additional funds applied to the members' retirement. By eliminating the COLA, the amendments significantly reduce the retirement benefits for members of the Pension Plan. The mandatory deduction of private funds in exchange for a reduced benefit is an unconstitutional taking.

Retirement is also a mandatory subject of collective bargaining. The trial court below correctly held that article I, section 6, of the Florida Constitution requires that the Legislature not completely ignore the right to collectively bargain when passing legislation affecting retirement, an established mandatory subject of bargaining. The State's claim that the Legislature's appropriations power supersedes public employees' rights under article I, section 6, is without merit. The State's reliance on State v. Florida Police Benevolent Ass'n, Inc., 613 So. 2d 415 (Fla. 1992), is misplaced. That case involved a completely different issue—whether the Legislature is required to fund a provision of a collective bargaining

agreement—and says nothing about whether the Legislature may, through substantive legislation, unilaterally change a mandatory subject of collective bargaining. Id. at 421.

This Court's decisions hold that legislative enactments, including those involving appropriations, are limited by article I, section 6. Article I, section 6, guarantees the right to effective collective bargaining. The trial court correctly recognized that there can be no effective bargaining only after the fact where, as here, the Legislature has unilaterally predetermined the term or condition through statute, rendering any subsequent negotiations futile. The Legislature has the power to make policy affecting subjects of negotiations, but it does not have the power to unilaterally amend the law that effectively excuses negotiation altogether.

PERRY, J., dissenting.

I respectfully dissent. In my view, the challenged provisions of chapter 2011-68, Laws of Florida, amount to an insufferable and unconstitutional "bait and switch" at the expense of public employees who were members of the Florida Retirement System (FRS) prior to July 1, 2011.[8] I would affirm the trial court's ruling and hold that the plain meaning of the preservation of rights statute is that

8. This is not the case with public employees who became members of the Florida Retirement System after July 1, 2011, as they did not have a contract with the State before the effective date of the new law.

state employees have a contractual right to a noncontributory retirement system that cannot be abridged; that this Court incorrectly determined otherwise in Florida Sheriffs Ass'n v. Department of Administration, 408 So. 2d 1033 (Fla. 1981), by misapplying the tenets of statutory construction and the law in this context; that we should therefore recede from Florida Sheriffs or, at the very least, distinguish and limit that case to its facts in accord with the trial court's ruling below; and that the employees at issue in this case are entitled to reimbursement with interest of the funds deducted or withheld under the challenged provisions.

PLAIN MEANING OF THE PRESERVATION OF RIGHTS STATUTE

The preservation of rights statute has provided since its inception that

> [t]he rights of members of the retirement system established by this chapter shall not be impaired by virtue of the conversion of the Florida Retirement System to an employee noncontributory system. As of July 1, 1974, the rights of members of the retirement system established by this chapter are declared to be of a contractual nature, entered into between the member and the state, and such rights shall be legally enforceable as valid contract rights and shall not be abridged in any way.

See § 121.011(3)(d), Fla. Stat. (1974); § 121.011(3)(d), Fla. Stat. (2012); ch. 74-302, § 1, at 937, Laws of Fla. The Legislature could not have been more clear. The statute's plain meaning is that state employees have a contractual right to a noncontributory retirement system that cannot be abridged. See art. 1, § 10, Fla. Const. ("No . . . law impairing the obligation of contracts shall be passed.").

"[W]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning." Atwater v. Kortum, 95 So. 3d 85, 90 (Fla. 2012) (quoting Holly v. Auld, 450 So. 2d 217, 219 (Fla. 1984)). "The best evidence of the intent of the legislature is generally the plain meaning of the statute." In re Order on Prosecution of Criminal Appeals by the Tenth Judicial Circuit Pub. Defender, 561 So. 2d 1130, 1137 (Fla. 1990). Without even mentioning the plain meaning rule, this Court in Florida Sheriffs stated to the contrary that "to best understand the intent of the legislature," it was necessary to fully discuss the "considerable Florida case law which established basic legal guidelines for governmental retirement systems in the state" that existed "[p]rior to the statutory enactment of the preservation of rights provision in 1974." 408 So. 2d at 1035.

After improperly considering that case law, the Court in Florida Sheriffs held that the preservation of rights statute "vests all rights and benefits already earned under the present retirement plan so that the legislature may now only alter retirement benefits prospectively," and that the statute "was not intended to bind future legislatures from prospectively altering benefits which accrue for future state service." Id. at 1037 (emphasis in original). In so doing, the Court violated the plain meaning rule and read into the preservation of rights statute words and

concepts that simply are not there. The present majority repeats and compounds this error.

MISAPPLICATION OF LAW

The Court in Florida Sheriffs erroneously buttressed its flawed holding by stating that "[t]o hold otherwise would mean that no future legislature could in any way alter future benefits of active employees for future services, except in a manner favorable to the employee. This view would, in effect, impose on the state the permanent responsibility for maintaining a retirement plan which could never be amended or repealed irrespective of the fiscal condition of this state." 408 So. 2d at 1037. That is a misstatement of the law. As recognized by the present majority, where, as here, the contract at issue is with a governmental entity, "an impairment may be constitutional if it is reasonable and necessary to serve an important public purpose." Majority op. at 10 (quoting U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 25 (1977)).

This is the test that the Court in Florida Sheriffs should have applied, but it failed to do so. By way of contrast, this Court properly applied this test in Chiles v. United Faculty of Florida, 615 So. 2d 671, 673 (Fla. 1993), recognizing that, while severely limited, the Legislature has the "authority to change the law to eliminate a contractual obligation it has itself created" and "must be given some

leeway to deal with bona fide emergencies." Citing U.S. Trust, this Court held that,

> [b]efore that authority can be exercised, . . . the legislature must demonstrate no other reasonable alternative means of preserving its contract with public workers, either in whole or in part. The mere fact that it is politically more expedient to eliminate all or part of the contracted funds is not in itself a compelling reason. Rather, the legislature must demonstrate that the funds are available from no other possible reasonable source.

Id. Properly applying this test in Florida Sheriffs would have surely led this Court to conclude that the statute at issue in that case unconstitutionally impaired state employees' contract rights created by the preservation of rights statute.

In short, the Court in Florida Sheriffs applied the wrong tenets of statutory construction and the wrong legal test to reach the wrong result. I would therefore recede from Florida Sheriffs.

TRIAL COURT'S RULING

Alternatively, and at the very least, I would find Florida Sheriffs to be distinguishable and limited to its facts. In that vein, I agree with Circuit Court Judge Jackie L. Fulford's ruling on this issue, which I find to be correct and deserving of recitation here:

> The parties agree that any analysis of this issue must begin with the Florida Supreme Court's opinion in Florida Sheriffs Association v. Department of Administration, 408 So. 2d 1033 (Fla. 1981). Sheriffs involved a special risk credit for a certain limited number of FRS members. The special risk credit was a benefit earned through years of service. The legislature increased the credit from 2% to 3% of the

employee's monthly income and then returned the credit to 2%. Based upon the facts before it, the Florida Supreme Court found that the legislature did not impair its contract with FRS members by returning the credit to 2% because the contract created by section 121.011(3)(d) did not preclude the legislature from "altering benefits which accrue for future state service." Id. at 1037.

The defendants contend that the Sheriffs case governs the present case and requires that summary judgment be entered in their favor. The plaintiffs contend that Sheriffs does not address the issues raised in this case. This Court finds that the facts upon which the Sheriffs decision was based differ substantially from the facts of this case. Unlike the special risk credit at issue in Sheriffs, the changes imposed by Senate Bill 2100 are not benefits which accrue for future state service. The changes at issue here, a complete change of the plan from a noncontributory to a contributory plan, and the elimination of entitlement to a cost-of-living adjustment, are qualitative changes to the plan, not changes to individual components of future accruals within the plan. FRS members have had continuous, unconditional rights to a noncontributory plan with a cost-of-living adjustment since the inception of FRS; these elements are not related to future state service. Because the Sheriffs case did not reach or contemplate changes such as these, 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 under Chapter 121 as suddenly tied to years of service and thereby altogether eliminated in the future. Such a reading would render the express contract created by section 121.011(3)(d) wholly illusory.

While Sheriffs does authorize the legislature to make prospective alterations to benefits which accrue for future state service within the "mandatory, noncontributory retirement plan," absolutely nothing in it can be read as authorizing the legislature to change the fundamental nature of the plan itself. The legislature is precluded by section 121.011(3)(d), Florida Statutes, from "abridg[ing] in any way" the unconditional contract rights of the plaintiffs. The changes challenged in this case plainly abridge the plaintiffs' unconditional contract rights to a noncontributory retirement plan that includes a cost-of-living adjustment. Although defendants contend that this reading of section 121.011(3)(d) improperly allows one legislature to bind the hands of future legislatures, Florida law is clear that a

legislature can, as part of its power to contract, authorize a contract that grants vested rights which a future legislature cannot impair. State v. Gadsden County, 229 So. 2d 587 (Fla. 1969). The Florida Legislature clearly did so when it adopted section 121.011(3)(d), Florida Statutes.

This Court's determination that Senate Bill 2100 impairs plaintiffs' contract with the state does not end its impairment inquiry. For an impairment of contract to be unconstitutional, it also must be substantial. U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1, 19-21 (1977); see also Pomponio v. Claridge of Pompano Condo., 378 So. 2d 774, 779-80 (Fla. 1980) (adopting approach to contract clause analysis similar to United States Supreme Court). The unrebutted evidence presented by the plaintiffs through their expert Charlette Moore demonstrates the substantiality of impairment at issue in this case. The costs of the changes to the individual plaintiffs range from $12,445.81 to $329,683.56 over the span of their working years and retirement if they receive no further salary raises. The costs increase if their salaries increase. The elimination of the future cost-of-living adjustment alone will result in a 4 to 24% reduction in the plaintiffs' total retirement income. These costs are substantial as a matter of law. See Oregon State Police Officers' Ass'n v. State, 918 P.2d 765 (Or. 1996); Calabro v. City of Omaha, 531 N.W. 2d 541 (Neb. 1995); Booth v. Sims, 456 S.E. 2d 167 (W.Va. 1995). The defendants' attempt to characterize the detrimental effects to plaintiffs as insubstantial are unavailing and without legal support.

The final step of the impairment analysis is a determination of whether the impairment is both reasonable and necessary to serve an important public purpose. U.S. Trust, 431 U.S. at 25. The Florida Supreme Court directs that in order for the state to justify impairment of its contractual obligations, it must demonstrate a "compelling state interest." Chiles v. United Faculty of Fla., 615 So. 2d 671, 673 (Fla. 1993). This requires a showing that there was "no other reasonable alternative means of preserving its contract with public workers, either in whole or in part. . . . that the funds are available from no other [possible] reasonable source." Id.

Defendants failed to meet this burden. They merely produced evidence that the state faced a significant budget shortfall; this is not enough. Although ordinarily courts give deference to the legislature regarding its policy determinations, where the state violates its own contract, "complete deference to a legislative assessment of

> reasonableness and necessity is not appropriate because the State's self-interest is at stake." U.S. Trust, 431 U.S. at 26. The undisputed record indicates that other reasonable alternatives existed to preserve the state's contract with FRS members: Senate Bill 2100 significantly reduced employer contributions to the FRS, and the legislature preserved $1.2 billion in unspent general revenue funds for the 2011-12 fiscal year. All indications are that the Florida Legislature chose to effectuate the challenged provisions of Senate Bill 2100 in order to make funds available for other purposes. This constitutes an unconstitutional impairment of plaintiffs' contract, for "[i]f a State could reduce its financial obligations whenever it wanted to spend the money for what it regarded as an important public purpose, the Contract Clause would provide no protection at all." Id.

Williams v. Scott, 19 Fla. L. Weekly Supp. 475b, 477 (Fla. 2d Cir. Ct. Mar. 6, 2012) (emphasis in original). I further agree with Judge Fulford's conclusion that the proper remedy is for the State "to reimburse with interest the funds deducted or withheld, pursuant to the challenged provisions . . . from the compensation or cost-of-living adjustments [of] employees who were members of the FRS prior to July 1, 2011." Id. at 478.

LEWIS and QUINCE, JJ., concur.

Certified Judgments of Trial Courts in and for Leon County – Jackie Lee Fulford, Judge - Case No. 2011 CA 1584 - An Appeal from the District Court of Appeal, First District, Case No. 1D12-1269

Pamela Jo Bondi, Attorney General, and Timothy David Osterhaus, Solicitor General, and Louis F. Hubener, III, Chief Deputy Solicitor General, Tallahassee, Florida, and Raoul G. Cantero, III and Thomas Neal McAliley of White & Case, LLP, Miami, Florida, and H. Douglas Hinson of Alston & Bird, LLP, Atlanta, Georgia, and David R. Godofsky, and Richard S. Siegel, Washington, District of Columbia,

for Appellants

Ronald Gustav Meyer, Jennifer Suzanne Blohm, and Lynn Colby Hearn of Meyer, Brooks, Demma and Blohm, P.A., Tallahassee, Florida, Alice O'Brien of the National Education Association, Washington, District of Columbia,

for Appellees

Richard Anthony Sicking, Coral Gables, Florida,

for Appellee Brett Sandlin

Aaron Martin Nisenson, Sarasota, Florida,

for Appellees the International Union of Police Associations, AFL-CIO, Jason Cannon, Joseph Paduano, and Gary Penny

G. Hal Johnson of the Florida Police Benevolent Association, Tallahassee, Florida,

for Appellees/Intervenors John Park and Randall Haire

Richard Paul Siwica of Egan, Lev & Siwica, P.A., Orlando, Florida,

for Intervenor/Appellee Rodney Durbin

James W. Linn and Glenn E. Thomas of Lewis, Longman & Walker, P.A., Tallahassee, Florida, and Harry Morrison, Jr. and Kraig A. Conn, Tallahassee, Florida,

for Amicus Curiae the Florida League of Cities, Inc.

Gregory Thomas Stewart of Nabors, Giblin & Nickerson, P.A., Tallahassee, Florida, and Virginia Saunders Delegal, Tallahassee, Florida,

for Amicus Curiae the Florida Association of Counties, Inc.

Craig Arthur Meyer, Thomas Ross McSwain, and Leah L. Marino of the Florida Senate, Tallahassee, Florida, and George T. Levesque and Donald Jay Rubottom of the Florida House of Representatives, Tallahassee, Florida,

for Amicus Curiae the Florida Senate and the Florida House of Representatives

Robert Evans Weissert, Tallahassee, Florida,

for Amicus Curiae Florida TaxWatch

Robert David Klausner and Adam Phillip Levinson of Klausner, Kaufman, Jensen & Levinson, Plantation, Florida,

for Amicus Curiae the National Conference on Public Employee Retirement Systems