Connecticut’s Legal Liability for Modifying Public Pension Benefits

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Introduction

On July 18, 2013, the City of Detroit filed the largest municipal bankruptcy petition in U.S. history. Governor Rick Snyder and emergency city manager Kevyn Orr reached that momentous decision in large part because Detroit’s liabilities had so overwhelmed, and eventually crippled, the city. Among those liabilities were long-term obligations like retirement pensions and employee health benefits, which have assumed center stage in national debates over maintaining fiscal solvency in the face of economic sluggishness. Five months later, Judge Steven Rhodes released an opinion discussing the major issues of the bankruptcy proceeding, including public pension liabilities. Perhaps with an eye toward informing other jurisdictions, Judge Rhodes held that pension plans can be impaired through bankruptcy because, under Michigan law, they deserve only the protection afforded to contracts and nothing greater.

Connecticut’s public pension liabilities have generated similar concerns about the state’s fiscal outlook. By the state’s own accounting, Connecticut has $25 billion of unfunded pension liabilities, a 65% increase since 2006 (see chart above). When using private sector accounting methods that present a more accurate picture of the state’s true fiscal situation, Connecticut’s unfunded pension liabilities exceed $70 billion (see chart on next page). The state also has roughly $30 billion of unfunded liabilities in its retiree healthcare funds.

For the fiscal year ending June 30, 2012, Connecticut State Employees Retirement System (SERS) plan members contributed just under $70 million to the trust fund, while outlays were about $1.4 billion. Considering all additions and deductions to the fund, its value dropped by $516 million over the year. A January 2014 State Budget Solutions Report found that

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3 See also CONN. POLICY INST., CONNECTICUT’S PUBLIC PENSION LIABILITIES: HOW BIG ARE THEY AND WHAT CAN BE DONE ABOUT THEM 1 (2012) [hereinafter CPI REPORT].
5 Id.
Connecticut’s per capita unfunded public pension liabilities were the third highest in the nation, trailing only Alaska and Hawaii.\(^6\)

Connecticut continues to grapple with the magnitude of the problem and what to do about it amid uncertainty about when and how strongly the economy will rebound. The state legislature recently increased its share of capital contributions to the pension fund. Other states have adopted more aggressive approaches, such as temporarily suspending and permanently reducing cost of living adjustments, increasing employee contributions, modifying pension benefits formulas, and switching certain employees to defined contribution 401(k)-style plans.\(^7\)

Strong political, and even legal, resistance has greeted these reforms. In September 2013, two retired public employees filed suit against officials overseeing their Lexington, Kentucky municipal pension fund. The parties, a former firefighter and a retired police officer, requested an injunction against a reduction in cost of living adjustments because they “believe[d] the city and the mayor infringed upon [interests in their pensions],” that “those interests are protected by the federal Constitution,” and that Lexington did not follow “the process required by law in

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\(^{7}\) See, e.g., Jim Gray, Our City Did Pension Reform and Lived To Tell the Tale, WALL S. J., Sept. 13, 2013 (describing how Kentucky reduced cost of living adjustments and increased government contributions to the pension fund); The Utah Pension Model, WALL S. J., Jan. 19, 2011 (“Utah's constitution bars pension changes for current workers—short of an imminent financial crisis in the fund—so the legislature created a defined contribution plan for all new hires starting this year.”); see also CPI REPORT, supra note 3 (discussing many of these plans).
making these changes to the pension system.”8 Similar suits have been filed in nearby Rhode Island and New Jersey, with the former litigation still pending.9 If Connecticut were to expand the scope of its pension reform as these other jurisdictions have, the continuation of unfunded liabilities or their elimination through changes in the law likely will expose the state to lawsuits by current and future public-sector retirees.

This paper analyzes Connecticut’s leeway to make various changes to its pension plans in light of current state and federal law. Changes to public pension plans are governed by various interrelated doctrines of constitutional law, contracts law, and property law. Against this backdrop, the paper predicts how courts will judge various actions the Connecticut legislature might consider. In doing so, this paper highlights important areas where legal ambiguity and uncertainty would influence outcomes. Finally, the paper briefly discusses the implications of the legal analysis for public employees, taxpayers, and government officials as the state continues to consider various policies for addressing its public pension crisis.

**Summary of Findings and Implications**

After reviewing relevant federal and Connecticut-specific precedent,10 this paper reaches the following legal conclusions:

1) The constitutional doctrine of sovereign immunity bars suits against state governments for monetary relief. As a result, Connecticut’s state government cannot be compelled to make additional payments into its pension funds. This means the state could decline to pay its annual “actuarially required contributions” and that the state cannot be compelled to pay out pension benefits in the event that underfunding leads to insolvency.

2) As long as the pension fund remains solvent, Connecticut cannot reduce pension benefits for retired workers (without their consent), since retirees have a vested property interest in those benefits.

3) Connecticut Supreme Court precedent suggests the state enjoys significant latitude to alter pension benefits unilaterally for employees who have not yet retired, although the court’s decisions include unresolved ambiguities on exactly how far this flexibility

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10 The analysis is based primarily on a reading of relevant authorities in Connecticut. However, as mentioned above, the rest of the country has created a patchwork of legal rules that govern modifications to pension systems. Nothing prevents the Connecticut courts from referencing decisions from other states, although the same decisions of course do not carry controlling weight. For a comprehensive guide to other states’ laws regarding pension modification, see Amy B. Monahan, *Public Pension Plan Reform: The Legal Framework*, 5 EDUC. FIN. & POL’Y 617, 638-39 tbl.1 (2010).
extends. Increasing employee contributions or adding a defined-contribution component to pension plans, for example, would likely be allowed.

The legal battle over state pensions will have significant consequences for many stakeholders.

Particularly among younger cohorts of state employees, the funding crisis has necessitated a sober reassessment of pension sizes and components. The mere fact that a pension benefit has been promised does not mean the state will actually pay it out. For better or worse, in a fiscal crisis the state has significantly more legal scope to reduce or decline to fund the pension benefits for younger workers than it does for current retirees and workers near retirement. This is not to say that the state should ignore the reasonable expectations of younger employees for life after retirement. It does mean, however, that younger workers have a particular interest in ensuring that the size and structure of pension benefits do not endanger the system’s long-term solvency.

**An Overview of Connecticut’s Pension System**

State statutes and negotiations between workers and agency officials at the state and municipal levels determine the extent of public retirement benefits in Connecticut.

The pension system for state government employees is based on statutory provisions collectively known as the State Employees Retirement Act (SERA). The most important features of SERA are the parameters it sets for plan eligibility and qualifications. Unionized employees at the state level receive representation from the State Employees Bargaining Agent Coalition (SEBAC), which is authorized to execute agreements over pension and health benefits. SEBAC is made up of fifteen unions, themselves composed of thirty-four bargaining units that engage in industry-specific discussions over pensions, health benefits, wages, and working conditions. As a result, SEBAC’s umbrella coverage “allows the state to negotiate one contract for retirement and health benefits that applies to all unionized state employees”; separate legislation covers non-unionized workers.

At the local level, Connecticut law creates two different systems for the pensions of teachers and other local employees. State government is responsible for the pensions of teachers, with eligibility, benefits, and other specifications set by the Connecticut General Statutes. For health benefits, retired teachers can choose whether to participate in the state’s Retired Teachers’ Healthcare Plan or plans offered by the school board that employed them.

Pensions for other local employees are set through negotiations at the municipal level. Municipalities may choose to participate in the state-administered Connecticut Municipal

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11 CONN. GEN. STAT. ANN. §§ 5-152 to 5-192x (West 2013).
12 Id. § 5-160 to 5-172.
13 Id. § 5-278(f).
15 See CONN. GEN. STAT. ANN. § 10-183b et seq.
Employees Retirement System (CMERS). Unlike with teachers’ pensions, the state is not on the hook for any liabilities related to MERS; its only responsibilities are fiduciary duties in the administration of the funds. However, as with SEBAC and its constituent unions, if a municipal employer decides to become a CMERS member, “all regular employees working twenty or more hours a week are required to be members.” These employees will then be subject to prescribed contribution and eligibility standards.

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<thead>
<tr>
<th>Group</th>
<th>How Retirement Benefits Are Determined</th>
<th>Who Is On The Hook?</th>
<th>Other Notes</th>
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<tr>
<td>State Employees</td>
<td>State Statute + State-Level Collective Bargaining</td>
<td>State Government</td>
<td>*For healthcare benefits, teachers may in some instances remain in local school board plans instead of state plan</td>
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<tr>
<td>Teachers</td>
<td>State Statute</td>
<td>State Government</td>
<td>** State also administers various retirement plans for judges that this paper does not directly address</td>
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<tr>
<td>Other Municipal Employees</td>
<td>Municipal Collective Bargaining</td>
<td>Local Governments</td>
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Connecticut does not follow a statutory formula for computing what the state must pay into the state employees’ and teachers’ pension funds, as states such as Minnesota and Arizona do. The relevant statutes instead require funding on an “actuarial reserve basis.” In short, this method allows the state to consider assumptions made about economic conditions and demographic composition in setting the present value of pension liabilities owed in the future. The rationale for actuarial funding is that “the cost of retirement benefits for a current employee should be paid during the years of service of that employee—the period for which the taxpayers are receiving the benefits of the services of that employee.”

**Legal Analysis**

Claims challenging the state’s authority to revise or cancel pensions typically fall within one or both of the following legal categories: a contract claim (either state common law breach or violation of the U.S. Constitution) and a “taking” of property that violates state and federal constitutional law. Additionally, the doctrine of sovereign immunity—which insulates state governments from certain types of liability, including suits for money damages—carries important consequences for the state’s legal obligations regarding pension funds.

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18 **CONN. GEN. STAT. ANN.** §§ 5-156a, 10-183z.
The legal analysis below draws primarily on the two Connecticut Supreme Court cases that deal most directly with legal challenges to state pension systems. The first, *Pineman v. Oechslin*, involved a challenge to a SERA amendment that raised the retirement age for female public employees to the same required of men. The second, *Poole v. City of Waterbury*, covered a dispute over the imposition of co-pays to a zero-cost health insurance plan negotiated through collective bargaining with the City of Waterbury. In both cases, the Connecticut Supreme Court decided that these claims had no legal validity. The analysis also features some discussion of the U.S. Constitution, which provides the starting point for any discussion of sovereign immunity.

1. What Role for Sovereign Immunity?

Sovereign immunity is a legal concept that restricts private citizens from suing their own state or other states. The U.S. Supreme Court’s views on sovereign immunity stem from the landmark case of *Hans v. Louisiana*, which barred a suit brought against the state government by its own citizens when the state defaulted on bond payments. Given that both bonds and pensions appear as liabilities on the state’s balance sheet, it would appear that, under *Hans*, citizens cannot demand payment when pension funds are at stake. In several cases, the Supreme Court has made clear that suits requesting monetary relief from states generally are prohibited. As one leading scholar on sovereign immunity has contended, the pension debt crisis will not change this understanding because “[t]he basic immunity of the states on their contractual debt obligations [has] been well-established.”

The reason for this doctrine is that “[p]rivate suits against nonconsenting States—especially suits for money damages—may threaten the financial integrity of the States.” In other words, precisely when a fiscal crisis threatens the state’s ability to carry out its normal functions, sovereign immunity steps in to shield it from having to sacrifice other public services in favor of a subset of residents.

This bedrock concept of immunity should offer Connecticut substantial shelter from lawsuits to pay out pension benefits. The one catch is that Connecticut maintains pension funds in separate accounts, unlike bond revenue which is paid into the treasury and commingled with other resources. Thus, the only way that sovereign immunity will fail as a defense is where the lawsuits implicate disbursing money already in the pension fund account. As the Connecticut Supreme Court has observed, “where the state will be unaffected by [a judgment in favor of the

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21 488 A.2d 803 (Conn. 1985).
22 831 A.2d 211 (Conn. 2003).
23 134 U.S. 1 (1890).
24 See Shane v. State, 821 F. Supp. 829, 832 (D. Conn. 1993) (citing Atascadero State Hosp. v. Scanlon, 473 U.S. 234 (1985); Edelman v. Jordan, 415 U.S. 651 (1974)); see also id. (“It is well established that the Eleventh Amendment does not bar an action seeking prospective injunctive relief, such as reinstatement or restoration of employment benefits . . . .”)
plaintiff], its consent to suit and waiver of sovereign immunity seem unnecessary.”

However, insofar as a claim against the state would require it to appropriate additional money into its pension funds, or pay out benefits to retirees from money that is not already in the pension fund, sovereign immunity would shield the state from liability. Similarly, if the pension fund were to become insolvent, sovereign immunity would preclude the state from having to pay out pension benefits. Even if the fund had been negligently managed, say by not following prudent investing rules, equitable forms of relief likely would be the only ones available.

Finally, it is worth noting that sovereign immunity from monetary relief applies only at the state level. The U.S. Supreme Court decided in Lincoln County v. Luning that locally issued bonds were obligations that had to be met. However, unlike state governments, local governments can make use of bankruptcy protections (as Detroit has) in the event that overly burdensome pension liabilities lead to complete fiscal insolvency.

2. Property Law Constraints on Unilateral Pension Changes

The Fifth Amendment to the U.S. Constitution in part forbids federal deprivations of property without due process of law, requiring that the property be used for “public use” and that the state provide the original owner “just compensation.” The Fourteenth Amendment applies the same protections against state governments.

Property rights in money, objects, and real estate can arise well before individuals actually possess them. Their interests are recognized as “vested” when some event occurs that the law recognizes as conferring an associated right to current or future possession.

Pension benefits fit this conception perfectly. By virtue of working for state and local governments and paying into the system out of one’s wages, public employees accrue an interest in a future stream of payments and other benefits. They obviously cannot take advantage of those benefits until retirement, but their right to do so later follows from their present-day activity. The key question is when the right to these benefits becomes a worker’s actual property.

The Pineman court wrote that SERA “establishes a property interest on behalf of all state employees in the existing retirement fund” and that the “interest is entitled to protection from arbitrary legislative action under the due process provisions of our state and federal constitutions.” The court added that individual employees obtain their property rights in the fund “once they satisfy the eligibility requirements of the act by becoming eligible to receive benefits.” By extension, property law does not protect current employees from unilateral changes to their pension plans because by definition they are not yet eligible to receive benefits.

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27 Gold v. Rowland, 994 A.2d 106, 125 (Conn. 2010) (internal quotation marks and citation omitted).
28 See, e.g., Dadisman v. Moore, 384 S.E.2d 816, 833 (W.V. 1988) (responding to charges of state pension underfunding by ordering a writ of mandamus requiring its trustees to “invest the [s]ystem’s funds in compliance with the highest standards of fiduciary duty”).
29 133 U.S. 529 (1890).
30 U.S. CONST. amend. V.
32 Id.
Retired employees, however, would have standing to challenge modifications they believed to limit their property rights.

The *Pineman* court did not fully address how far states can go in reforming retirees’ benefits before due process or takings protections will cut short those attempts. It held that the state cannot engage in “arbitrary legislative action” but gave no guidance as to what is and is not arbitrary. Specifically, does the purported test signal that any means are available to obtain non-arbitrary ends? Does arbitrariness have any relationship with the extent of the proposed pension reform, especially whether the legislature engages in wholesale repudiation of pension benefits versus smaller changes like adjustments to COLAs?

These questions remain open for potential future litigation. But the general rule appears to be that property interests give no legal protection to current employees while offering strong legal protection for current retirees. The story would change, of course, if the pension fund itself were exhausted, at which point sovereign immunity would protect the state from lawsuits even from retirees, as discussed in the previous section.

### 3. Contract Law Constraints On Unilateral Pension Changes

Courts in Connecticut and elsewhere have examined challenges to state pension reform through the lens of contract law much more frequently than property law. As described above, Connecticut pensions are negotiated through collective bargaining agreements, usually between SEBAC and the state government. As a result, their form has a strongly contractual flavor. In exchange for service to the government, employees receive monetary, health, and other benefits after retirement. When the employee and government employer arrive at that bargain, the employee assumes that, in consideration for working a specified number of years, he will guarantee a steady stream of payments during retirement.

Although teacher pensions are set through statute rather than collective bargaining, the section of the Connecticut statutes that outlines those benefits specifies that “on or after a member vests in the system by becoming eligible to receive a retirement benefit . . . the member’s benefit . . . is contractual in nature and no public or special act of the General Assembly shall diminish such benefit.”

As states have discovered that many pension promises followed on unrealistic assumptions about economic growth or workforce demographics and have therefore become increasingly unaffordable, legislatures have sought to modify pension structures to ease the twin burdens of shrinking resources and increasing pension claims.

However, contract law requires that both parties assent to any changes to a contract; it frowns upon unilateral adjustments. Generally speaking, if a court recognizes an enforceable contract and the state were not to perform as it had agreed or changed the terms on its own, then an employee could claim a breach of that contract.

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33 *Id.*

34 *CONN. GEN. STAT. ANN.* § 10-183c (West 2013).
Yet not every pension plan necessarily is a contract in the eyes of the law. Challenging unilateral state changes to pension plans requires that employees demonstrate that the pension terms at issue constituted a contract in the first place. If they are able to demonstrate the existence of a contract, they then must demonstrate the unilateral changes at issue violated that contract.

A. The State Can Unilaterally Change State Employee Pension Provisions Enacted Through State Statute

In addition to establishing the framework for collective bargaining between the state government and SEBAC, SERA also includes specific provisions of state employee pension plans themselves. For instance, the original 1939 Act permitted male employees to retire at age fifty-five after twenty-five years of service and female employees to retire at age fifty with twenty-five years of service. In 1975, the General Assembly amended the Act to raise the retirement age for women to equal that of men.

In the Pineman case that followed from this amendment, female plaintiffs asked the Connecticut Supreme Court to decide that increasing the retirement age to the same required of men violated their contract with the state. They argued that the amendment upset their legitimate expectations about when they could safely leave the workforce and receive full benefits. As mentioned above, if SERA were a contract, then the General Assembly would have to receive the approval of all covered public employees before changing the retirement age.

However, the Connecticut Supreme Court stuck to a very narrow understanding of public-sector contracts. The court’s analysis was highly pragmatic. It had to wrestle with the fact that notions of state sovereignty mean that the General Assembly retains the right to amend its statutes without approval of those impacted by the changes. But if SERA were a contract, then the legislature’s amendment power over laws would be wiped out entirely. In the court’s words: “It makes little sense to strain established rules . . . to find a contract” just to “allow for necessary unilateral modification by the state.”

The best outcome, thought the justices, was to interpret the statute narrowly, requiring specific language in the statute that refers to contract formation. In the absence of that explicit text in SERA, the statute creating the state pension system is not a contract in the common law sense. Thus, any alteration of the terms SERA sets for state pensions cannot give rise to a breach of contract suit.

It is important to note that this analysis does not apply to teachers’ pensions, where there is specific language in the text of the statute specifying the existence of a contract in certain instances.

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35 Id. at 809.
B. The General Assembly Can Unilaterally Change Teachers’ Pensions Protected By Contract or Municipal Pension Plans Negotiated Through Collective Bargaining as Long as the Changes Do Not Substantially Reduce Overall Benefit Levels

In addition to Pineman, the other major Connecticut Supreme Court case concerning alterations to retiree benefits via contract was Poole v. City of Waterbury. In 1986, the City of Waterbury agreed in collective bargaining with municipal firefighters to provide a retiree health package with a flexible “indemnity plan” that included no cost to the employee. By 1995, legislators in Hartford were concerned about how underfunded Waterbury’s pension and retiree health care funds had become. The General Assembly passed a special law in response that mandated fiscal belt-tightening. The result was a 1999 agreement with the firefighters that substituted the indemnity plan with a PPO and the imposition of co-pays. The Poole plaintiffs alleged that the state law mandating austerity and the ensuing imposition of co-pays violated their collective bargaining agreement.

The Poole plaintiffs used several contract arguments in pursuing their claims against the Waterbury, including common law breach. The Connecticut Supreme Court had no trouble identifying the retirement insurance plan as a contract between former employees and the city because—unlike the retirement age at issue in Pineman—it had been explicitly negotiated through collective bargaining.

On its face, the move from an indemnity plan to a PPO looks like the kind of unilateral change that contract law forbids. However, even while finding that the health care plan constituted a contract, the court also held that the collective bargaining agreement included an implied right for the City to make “some modifications to the form, but not the substance, of the medical benefits plan.”

The Connecticut Supreme Court reviewed several modifications that as alleged might have constituted changes to the “substance” of the plan: the addition of co-pays, restriction to a specific network of physicians under the PPO, and leaving determination of appropriate care with the PPO. In each case, the court found that these adjustments, though potentially onerous for retirees, did not mean that coverage was necessarily worse. It found that even with these changes, the retirees continued to receive benefits “substantially commensurate with the benefits provided under the [original] agreements.” Consequently, the court declined to hold that the government had breached its contract. This same analysis would likely apply to teachers’ retirement benefits protected by contract.

C. The State Has Substantial Leeway to Unilaterally Change State Pension Plans Negotiated Through Collective Bargaining Pursuant to SERA

Whether a unilateral change to a pension plan is governed by the contract principles of Pineman or Poole depends on whether the provisions at issue were initially enacted in a statute that did not directly specify a contractual right (Pineman) or a local collective bargaining agreement.

36 831 A.2d 211 (Conn. 2003).
37 Id. at 231-32.
38 Id. at 234-35.
What about pension provisions developed through collective bargaining between the state and SEBAC, as provided by SERA? On its face, each SEBAC agreement resembles a contract like those at issue in Poole. But unlike the agreement at issue in Poole, SEBAC collective bargaining only occurs in the first place because SERA provides for it. Would an amendment to SERA that takes certain aspects of state pensions outside the framework of collective bargaining (say, statutory limits on COLAs) still constitute an invalid, unilateral modification of the contract? Or would it instead fall within the state’s rights to make unilateral changes to SERA, as provided by Pineman? The question would seem to be one first impression for the Connecticut courts.

Regardless of the outcome of that decision, even if amendments to SERA that modified SEBAC agreements fell within the more restrictive Poole line of cases, Poole’s holding leaves the state substantial leeway to make unilateral changes to the structure of state pensions (be it for teachers or state employees). Increasing employee contributions or switching from a defined-benefit to defined-contribution plan structure, for instance, would likely fall within the scope of unilateral modifications to the “form” of the plan that Poole allowed. And, as discussed earlier, even if the state were held liable for breach, sovereign immunity would insulate the state from having to make additional payments into the pension fund to finance those benefits.

D. The Contracts Clause in the U.S. Constitution Provides No Additional Constraints on the State’s Ability to Modify Pension Plans

Public employees’ legal claims do not end at state common law suits. The U.S. Constitution, through a provision known as the Contracts Clause, prohibits states from passing a “law impairing the obligation of contracts.”\(^39\) State courts around the country have been called upon to decide whether this part of the Constitution protects pension recipients from having their expectations upended by payment reductions.\(^40\)

The U.S. Supreme Court devised a three-part test for deciding what constitutes an improper impairment under the Contracts Clause when the state is a party to the contract.\(^41\) First, tracking the text of the clause itself, the test asks if the state law change created a substantial impairment to contractual obligations. If yes, the second prong asks whether the substantial impairment is otherwise related to a legitimate public purpose. Finally, a court will query whether the state law amendment chosen was reasonable and necessary in light of the public goals.

The plaintiffs in both Pineman and Poole raised Contracts Clause claims on top of their state law pleadings. Because the Pineman case involved SERA, and the Connecticut Supreme Court determined that SERA is not a contract, the federal constitutional claim also failed. Similarly, while Poole did involve a contract, the court had held that the state’s modifications did not

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\(^39\) U.S. Const. art. 1, § 10. cl. 1.
impact the “substance” of the contract. As a result, the modification did not substantially impair contractual obligations, and the court once again did not have to go beyond the first element.

The Poole court also provided a safe harbor of sorts for episodes such as the current retirement benefits crises facing Connecticut and many other states. The strongest language supporting the state’s right to modify pension contracts focuses directly on the fiscal predicaments like the present one: “A municipality must ensure its fiscal integrity to provide not only benefits for past and future employees, but also necessary services to its residents.” At the end of the day, the court implied, the greater good of supplying public services to all residents cannot be sacrificed for a subset of retired public employees. The reality of budget constraints cannot justify neglecting other critical commitments such as health, safety, and education.

Implications of Legal Analysis

Both public employees and the state agencies for which they work stand to lose much if the current pension system does not undergo significant reform. Changes to investment strategies at best can produce limited relief given the uncertainty and variability of market returns. More important, the impending demand increase for retirement benefits almost surely will outpace any investment gains that could reasonably accrue. The Connecticut General Assembly and local authorities therefore confront a very delicate political and legal dilemma.

Modifying collective bargaining agreements or state statutes has triggered civil lawsuits that show no signs of disappearing. Both employees and the state should enter negotiations and trial with a better understanding of the legal background, which this paper has summarized. The analysis focused on the liability that the state could face, finding only narrow openings for holding the state liable.

In the aggregate, this result seems appropriate. When legitimate fiscal constraints severely limit the state’s ability to make good on its promises, the law should and does create a safe harbor for the legislature. Shifting payment structures, the relative burdens of funding the pension system, and the timing of pension vesting are all legal methods that meet retirees’ needs as well as the state’s obligations to other citizens.

One clear implication of the legal stakes, especially in light of the pensions-as-property analysis, is the dilemma facing younger public employees. If property or contract considerations hamper unilateral changes in explicit pension terms, but the underlying obligation of the state to pay is ultimately unenforceable because of sovereign immunity, younger workers face the prospect of watching assets drain from the pension system, possibly leaving them with nothing.

Those workers should pressure their union representatives to engage in responsible renegotiation of current collective barging agreements. These new compacts would balance the legitimate expectation that public employees will receive benefits during retirement with the state’s legitimate interest in staying open for business. Without this reappraisal, benefits that will accrue even in a few decades might bankrupt the system entirely. This paper has shown that legal

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42 Poole v. City of Waterbury, 831 A.2d 211, 223 (Conn. 2003) (emphasis added).
recourse will afford very little relief. Thus, the best route forward for both sides is to make some sacrifice in the present and create a more sustainable pension structure for the future.