STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC. **SUPERIOR COURT**

(FILED: March 18, 2014)

MANUEL ANDREWS, JR., et al.	:	
	:	
vs.	:	**C.A. No. KC-2013-1128**
	:	
JAMES J. LOMBARDI, in his capacity as Treasurer of the City of Providence, Rhode Island	:	

DECISION

TAFT-CARTER, J. Before this Court is the Motion for Order of Proof at the Preliminary Injunction Hearing and at Trial (Motion for Order of Proof) of Defendant James J. Lombardi (Defendant), in his capacity as Treasurer of the City of Providence, Rhode Island. Plaintiffs Manuel Andrews, Jr., et al (Plaintiffs) have objected. Jurisdiction is pursuant to G.L. 1956 §§ 8-2-13, 8-2-14, and 9-30-1 et seq.

I

FACTS AND TRAVEL

Providence police officers and firefighters have long engaged in mandatory and binding collective bargaining with the City of Providence (City) pursuant to either the Municipal Police Arbitration Act, G.L. 1956 § 28-9.2-1 et seq. or the Firefighters Arbitration Act, § 28-9.1-1 et seq. Various collective bargaining agreements (CBAs) with the City have resulted. A particular benefit afforded under the CBAs was health insurance for the lifetime of the Providence police officer or firefighter and the lifetime of his or her spouse.

On June 30, 2011, Governor Chafee signed House Bill 2011 – 5894, substitute A, which became P.L. 2011, ch. 151, art. 12, § 2 (Medicare Enrollment Statute). The Medicare

Enrollment Statute, effective as of July 1, 2011, permitted municipalities to require retirees to "enroll in Medicare as soon as he or she is eligible."

On July 19, 2011, the Providence City Council enacted ch. 2011–32, ordinance number 422, amending art. VI, § 17 of the Providence Code of Ordinances (Medicare Ordinance). The Medicare Ordinance required Medicare-eligible retirees to enroll in Medicare as of their sixty-fifth birthday to receive health benefits.

On October 12, 2011, the Providence Retired Police and Firefighters Association filed C.A. No. 2011-5853 challenging the constitutionality of the Medicare Ordinance. The Providence Retired Police and Firefighters Association sought a preliminary injunction barring the City from implementing the Medicare Ordinance. On January 30, 2012, this Court granted the preliminary injunction.

On May 14, 2012, after several months of discovery, this Court ordered the Providence Retired Police and Firefighters Association and City into mediation. The Police Union (Providence Lodge No. 3, Fraternal Order of Police), representing active Providence police officers, and the Firefighters Union (Local 799 of the IAFF, AFL-CIO) representing active Providence firefighters, also participated in the mediation. Through the mediation, the participating parties reached a tentative settlement agreement.

On June 26, 2012, members of the Providence Retired Police and Firefighters Association approved the tentative settlement agreement (Settlement Agreement). On August 6, 2012, the Providence Retired Police and Firefighters Association filed C.A. No. 2012-3590 and moved for class certification. On September 28, 2012, this Court recognized members of the Providence Retired Police and Firefighters Association as a certified class (Certified Class).

Plaintiffs are "opt-out" members of the Certified Class who retained their right to take separate action against the City.

On October 22, 2013, Plaintiffs filed the underlying action challenging the constitutionality of the Medicare Ordinance on various grounds, including a Contract Clause violation. Plaintiffs' Complaint specifically seeks a preliminary injunction prohibiting the City from "terminating or suspending the Health Care Benefits to which [they] are entitled under the terms of the CBAs."

On January 7, 2014, Defendant filed the instant Motion for Order of Proof prior to the preliminary injunction hearing with respect to Plaintiffs' underlying Contract Clause claim. On January 15, 2014, Plaintiffs objected to Defendant's Motion for Order of Proof. On January 17, 2014, this Court heard the parties' arguments on the Motion for Order of Proof.

II

ANALYSIS

Defendant's instant motion raises issues related to the burden of proof and law of presumptions. Defendant asks this Court to exercise its "sound discretion" under R.I. R. Evid. 611 to set the order of proof for Plaintiffs' Contract Clause claim. See R.I. R. Evid. 611, Advisory Committee Notes; see also Padula v. Machado, 416 A.2d 1184 (R.I. 1980) (regarding a trial judge's "sound discretion" to set the order of proof); State v. Mathias, 423 A.2d 484 (R.I. 1980) (pertaining to a trial judge effectuating an "orderly and expeditious" handling of a trial). Defendant specifically contends that Plaintiffs cannot prevail at either the preliminary injunction stage or trial without proving each element of the claim beyond a reasonable doubt.

"[T]he criteria a hearing justice should consider in deciding whether to grant a preliminary injunction are well settled." Fund for Cmty. Progress v. United Way of Se. New

England, 695 A.2d 517, 521 (R.I. 1997). When determining whether to issue a preliminary injunction, the hearing justice must determine

> "'whether the moving party (1) has a reasonable likelihood of success on the merits, (2) will suffer irreparable harm without the requested injunctive relief, (3) has the balance of the equities, including the possible hardships to each party and to the public interest, tip in its favor, and (4) has shown that the issuance of a preliminary injunction will preserve the status quo.'" Vasquez v. Sportsman's Inn, Inc., 57 A.3d 313, 318 (R.I. 2012) (quoting Iggy's Doughboys, Inc. v. Giroux, 729 A.2d 701, 705 (R.I. 1999)); see also Fund for Cmty. Progress, 695 A.2d at 521.

Substantive issues, however, are not resolved at the level of a preliminary injunction. See Iggy's Doughboys, 729 A.2d at 705. A "reasonable likelihood of succe[ss] on the merits" does not therefore mean a "certainty of success." See Fund for Cmty. Progress, 695 A.2d at 521. Instead, our Supreme Court requires "only that the moving party make out a prima facie case" for the underlying claim. Id. "Prima facie evidence is [considered the] amount of evidence that, if unrebutted, is sufficient to satisfy the burden of proof on a particular issue." Paramount Office Supply Co. v. D.A. MacIsaac, Inc., 524 A.2d 1099, 1101 (R.I. 1987).

With respect to a Contract Clause claim, the United States Supreme Court in Energy Reserves Group, Inc. v. Kansas Power & Light Co., 459 U.S. 400 (1983), has formulated "a three-part analysis for harmonizing the command of the [Contract] Clause with the 'necessarily reserved' sovereign power of the states to provide for the welfare of their citizens." Baltimore Teachers Union v. Mayor & City Council of Baltimore, 6 F.3d 1012, 1015 (4th Cir. 1993). Our Supreme Court in R.I. Depositors Econ. Prot. Corp. v. Brown, 659 A.2d 95, 106 (R.I. 1995), has since adopted the three-pronged test fixed by the United States Supreme Court. Trial courts are therefore directed to inquire:

> "First, has the state law in fact substantially impaired a contractual relationship? Second, if the law constitutes a substantial

> impairment, can the state show a legitimate public purpose behind the regulation, 'such as the remedying of a broad and general social or economic problem'? Third, is the legitimate public purpose sufficient to justify the impairment of the contractual rights?" Id. at 106 (citations omitted).

Additionally—as a starting point for any challenged legislation—courts at both the federal and state level presume legislative enactments to be "valid and constitutional." Mackie v. State, 936 A.2d 588, 595 (R.I. 2007); see e.g., Dowd v. Rayner, 655 A.2d 679, 681 (R.I. 1995); Kass v. Ret. Bd. of the Emps.' Ret. Sys. of R.I., 567 A.2d 358, 360 (R.I. 1989); Middleton v. Texas Power & Light Co., 249 U.S. 152, 157 (1919) ("There is a strong presumption that a Legislature understands and correctly appreciates the needs of its own people . . . and that its discriminations are based upon adequate grounds."); City of Boerne v. Flores, 521 U.S. 507, 534 (1997) ("[A Legislature is presumed] to make its own informed judgment on the meaning and force of the Constitution."). Thus, "[w]hen reviewing a challenge to a statute's constitutionality, [a court must exercise] the 'greatest possible caution.'" Mackie, 936 A.2d at 595 (quoting Cherenzia v. Lynch, 847 A.2d 818, 822 (R.I. 2004)). "Unless the party challenging the statute's constitutionality can 'prove beyond a reasonable doubt that the act violates a specific provision of the constitution or the United States Constitution, [a court shall] not hold the act unconstitutional.'" Id. (citing City of Pawtucket v. Sundlun, 662 A.2d 40, 44-45 (R.I. 1995)); see also Dowd, 655 A.2d at 681 ("[T]he party challenging the constitutional validity of a statute carries the burden of persuading the court beyond a reasonable doubt that the legislation violates an identifiable aspect of the constitution.").

At the forthcoming preliminary injunction hearing, it is well established that Plaintiffs hold the burden of persuasion for each factor of a preliminary injunction analysis. See Vasquez, 57 A.3d at 318 (requiring the moving party to demonstrate (1) "a reasonable likelihood of

success on the merits," (2) "irreparable harm," (3) a favorable "balance of the equities," and (4) preservation of the "status quo"); see also Iggy's Doughboys, 729 A.2d at 705; Fund for Cmty. Progress, 695 A.2d at 521. Yet, this Court's weighing of the first factor of a "reasonable likelihood of success on the merits" necessitates that it consider the burden of proof for the underlying Contract Clause claim. See Vasquez, 57 A.3d at 318; see also Fund for Cmty. Progress, 695 A.2d at 521 (providing that "the moving party [must] make out a prima facie case" for a "reasonable likelihood of success on the merits"). Defendant thus asks this Court to articulate the burden of proof for a Contract Clause claim, while also arguing that the test's burdens—production and persuasion—fall squarely on Plaintiffs.

Defendant first categorizes the legislation's presumed constitutionality as an evidentiary presumption governed by R.I. R. Evid. 302. Defendant cites Terry v. Elec. Data Sys. Corp., 940 F. Supp. 378 (D. Mass. 1996), as authority for the proposition that the presumption of constitutionality is a presumption existing under Rule 302. Rule 302 provides that all rebuttable presumptions are either presumptions effecting the burden of production (governed by R.I. R. Evid. 303) or presumptions effecting the burden of persuasion (governed by R.I. R. Evid. 305). See R.I. R. Evid. 302. Defendant argues that Plaintiffs in the first instance have the burden of production to overcome the presumption of constitutionality. Defendant also argues that Plaintiffs have the burden of persuasion for all elements of the Contract Clause test, maintaining that Energy Reserves, 459 U.S. 400, does not impose a burden on the state to prove justification. Rather, Defendant looks to R.I. R. Evid. 305 and contends that because the issues presented are ones of public policy, Plaintiffs bear both the burden of persuasion and the burden of production with respect to the substantial impairment prong and the legitimate public purpose prongs of the Contract Clause test.

Beginning its analysis, this Court observes that a "[b]urden of proof and presumption embody distinct legal concepts." 29 Am. Jur. 2d Evidence § 172 (2013). "They are related in that a presumption may shift the burden of going forward as to a particular matter from one party to another . . . . " Id. More simply, "[t]he function of a presumption is to allocate the burdens of proof." Id. "A presumption guides the trial judge in allocating the burden of production at a particular time." Id. However, a presumption "should not be used as a surrogate for substantive evidence or as a substitute for satisfying the burden of proof assigned by law." Id. A burden of proof, on the other hand,

> "embraces two different concepts. The first concept, which is often alluded to as the 'burden of persuasion,' refers to the litigants' burden of establishing the truth of a given proposition in a case by such quantum of evidence as the law may require. The burden of persuasion never shifts. The second concept refers to the 'burden of going forward' with the evidence, which shifts from party to party as the case progresses." Murphy v. O'Neill, 454 A.2d 248, 250 (R.I. 1983); see also 29 Am. Jur. 2d Evidence § 171 (2013) (relegating the "burden of production" to the party which must supply evidence to support a proposition and the "burden of persuasion" to the party which must convince the factfinder).

Here, when setting the order of proof, this Court remains mindful of the distinction and relationship between a presumption and the burden of proof.

Under the established Contract Clause test, as crystalized in Retired Adjunct Professors of the State of R.I. v. Almond, 690 A.2d 1342, 1344-45 (R.I. 1997) and Nonnenmacher v. City of Warwick, 722 A.2d 1199, 1203-04 (R.I. 1999), a plaintiff has the threshold burden of proving the substantial impairment of a contract. In each case, our Supreme Court—though finding no substantial impairment of a contract because of the plaintiff's failure to evince definite or actual impairment—implicitly acknowledged that a plaintiff has the burden of production for the substantial impairment of a contract. See Retired Adjunct Professors, 690 A.2d at 1344-45;

Nonnenmacher, 722 A.2d at 1203-04. This Court therefore finds that Plaintiffs, as the party asserting the Contract Clause claim, have the burden of production for the test's first prong of substantial impairment.

The remaining prongs of the Contract Clause test concern the justification of legislation's substantial impairment of a contract. See Energy Reserves, 459 U.S. at 411-12; R.I. Depositors, 659 A.2d at 106. Relying heavily on United Auto., Aerospace, Agricultural, Implement Workers of Am. Int'l. Union v. Fortuno, 633 F.3d 37 (1st Cir. 2011), Defendant argues that Plaintiffs have the burden of proof—respectively, production and persuasion—for these prongs. Such reliance is mistaken, however, as Fortuno is limited in scope. While addressing the burdens of proof with respect to a Contract Clause action, Fortuno does so only within the procedural posture of a Rule 12(b)(6) motion. See id. at 42 n.7. ("[The Court] only [addresses] which party bears this burden in the specific context and procedural posture presented in this appeal."). The procedural posture here, a preliminary injunction, is decidedly different. Fortuno thus provides guidance only to the extent that a plaintiff must "plead facts sufficient to allow [a] court to draw the reasonable inference that [a defendant is] liable for violating the Contract Clause."[1] Id. at 47.

Moreover, Defendant's arguments fail to address the essential dynamic between the Contract Clause and the sovereign power. A state's police power encompasses "the sovereign right of the government to protect the lives, health, morals, comfort and general welfare of the people." Manigault v. Springs, 199 U.S. 473, 480 (1905). Only the United States Constitution and a state's own constitution limit this plenary power. See 16A Am. Jur. 2d Constitutional Law § 379 (2014) (explaining the limitations placed on a state's police power by federal and state

[1] In its memorandum, Defendant concedes that Plaintiffs have met this requirement: "Plaintiffs are entitled to a hearing on their motion for a preliminary injunction, and possibly a trial, because they have properly complained that two legislative bodies have acted in a way that is allegedly repugnant to the state and federal constitutions . . . "

constitutions). The United States and Rhode Island Constitutions effectuate one such limitation, providing that no "law impairing the obligation of contracts, shall be passed." R.I. Depositors Econ. Prot. Corp., 659 A.2d at 106 (citations omitted); see also U.S. Const. art. I, § 10 ("No State shall . . . pass any . . . Law impairing the Obligation of Contracts."); R.I. Const. art. I, § 12 ("No ex post facto law, or law impairing the obligation of contracts, shall be passed.").

The Contract Clause was initially equated with strong constitutional protections such as prohibitions against ex post facto laws and bills of attainder. See Fletcher v. Peck, 10 U.S. 87, 136-37 (1810). Chief Justice John Marshall, in Fletcher v. Peck, described the Contract Clause as existing "to shield [people] and their property from the effects of those sudden and strong passions" of the legislature. Id. at 138. Despite the Contract Clause's absolute bar, the United States Supreme Court has consistently placed "the general welfare of the people [as] paramount to any rights under contracts between individuals." Manigault, 199 U.S. at 480. The Court, in a series of cases, "accommodated [the Contract Clause] to the inherent police power of the State 'to safe guard the vital interests of its people.'" Energy Reserves, 459 U.S. at 410; see e.g., Ogden v. Saunders, 25 U.S. 213 (1827) (preventing the Contract Clause from limiting an individual's ability to enter into future contracts); Charles River Bridge v. Warren Bridge, 36 U.S. 420 (1837) (defeating a Contract Clause claim by construing all ambiguities in public contracts in favor of the state); Stone v. Mississippi, 101 U.S. 814 (1879) (holding that a state cannot utilize a contract to restrict its inalienable power to protect the health or morals of the public); Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398 (1934) (using the police power doctrine to uphold emergency legislation addressing a financial crisis related to mortgage foreclosures); El Paso v. Simmons, 379 U.S. 497 (1965) (relying on the police power doctrine to

sustain a statute requiring property redemption rights to be exercised within a five year time period).

However, in a marked shift, the United States Supreme Court invalidated legislation under the Contract Clause in U.S. Trust Co. of New York v. New Jersey, 431 U.S. 1 (1977) (using the Contract Clause to nullify a statutory repeal of a covenant limiting Port Authority subsidies for rail passenger transportation). The U.S. Trust Court "attempt[ed] to reconcile the strictures of the Contract Clause with the 'essential attributes of sovereign power.'" 431 U.S. at 21. The Court found that an "impairment [of a contract where the State is a party] may be constitutional if it is reasonable and necessary to serve an important public purpose." Id. at 25. In such instances, "complete deference to a legislative assessment of reasonableness and necessity is not appropriate because the state's self-interest is at stake." Id. The Court explained, "[i]f a State could reduce its financial obligations whenever it wanted . . . the Contract Clause would provide no protection at all." Id. at 26; see also Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 242 (1978) ("If the Contract Clause is to retain any meaning at all [ ] it must be understood to impose some limits upon the power of a state to abridge existing contractual relationships."). Ultimately, the Energy Reserves Court set forth a three-pronged test balancing "the command of the [Contract] Clause with the 'necessarily reserved' sovereign power of the states to provide for the welfare of their citizens." Baltimore Teachers Union, 6 F.3d at 1015.

Recognizing, nonetheless, that "[t]he general welfare of the people [is] paramount to any rights under contracts between individuals," Manigault, 199 U.S. at 480, the Court's formulated Contract Clause test allows for the substantial impairment of a contract to be justified. See Energy Reserves, 459 U.S. at 411-12; R.I. Depositors Econ. Prot. Corp., 659 A.2d at 106; see

also Black's Law Dictionary 944 (9th Ed. 2009) (defining justification as "[a] lawful or sufficient reason for one's acts" or "any fact that prevents an act from being wrongful"). The U.S. Trust Court originally explained, "[l]egislation adjusting the rights and responsibilities of contracting parties must be upon reasonable conditions of a character appropriate to the public purpose in justifying its adoption." 431 U.S. at 22. Subsequently, the Energy Reserves Court provided, "the State, in justification, must have a significant and legitimate public purpose behind the regulation." 459 U.S. at 411-412. The Energy Reserves Court further inquired "whether the adjustment of 'the rights and responsibilities of contracting parties [is based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legislation's] adoption.'" Id. (quoting U.S. Trust, 431 U.S. at 22). Our Supreme Court, citing Energy Reserves, has expressly asked, "is the legitimate public purpose sufficient to justify the impairment of the contractual rights?" R.I. Depositors Econ. Prot. Corp., 659 A.2d at 106. Therefore, a state may adjust contractual rights when justified.

With respect to finding justification, the United States Supreme Court has required a contractual impairment to be "both reasonable and necessary to serve the admittedly important purposes claimed by the State." U.S. Trust, 431 U.S. at 29. The U.S. Trust Court considered whether a "less drastic modification" of the contract was possible and if the state could have "adopted alternative means of achieving its [ ] goals." Id. at 30. This language sounds of heightened scrutiny, under which it is doctrinal that a state must justify its legislative action. See 16B Am. Jur. 2d Constitutional Law § 862 (2014) ("[T]he state, [with strict scrutiny,] bears the additional burden of establishing that it has a compelling interest that justifies the law and that the law or ordinance is narrowly tailored such that there are no less restrictive means available to effectuate the desired end.").

Indeed, the First Circuit has twice associated the test's second and third prongs with a more in-depth examination. See Mercado-Boneta v. Administracion del Fondo de Compensacion al Paciete Through Ins. Comm'r of Puerto Rico, 125 F.3d 9, 13 (1st Cir. 1997); McGrath v. Rhode Island Ret. Bd., 88 F.3d 12, 16 (1st Cir. 1996). In McGrath, the First Circuit provided, "when a state is itself a party to a contract, [a court] must scrutinize the state's asserted purpose with an extra measure of vigilance." 88 F.3d at 16 (citing U.S. Trust, 431 U.S. at 25). The First Circuit, in Mercado-Boneta, described its justification inquiry as "more searching than the rational basis review employed in Due Process or Equal Protection analysis." 125 F.3d at 13; see Liberty Mut. Ins. Co. v. Whitehouse, 868 F. Supp. 425, 434 (D.R.I. 1994) (finding "the standards applicable to economic legislation under the Due Process Clause are less exacting than the limitations imposed on states by the Contract Clause"); Pension Benefit Guar. Corp. v. R.A. Gray & Co., 467 U.S. 717, 732-33 (1984) (discussing the "constitutional principles [ ] developed under the Contract Clause" and noting "the less searching standards imposed on economic legislation by the Due Process Clauses"). This language describes judicial scrutiny exceeding rational basis.

Furthermore, upon examining the rulings of its sister courts, this Court finds considerable precedent for the imposition of "justification" to the state. Courts, including the Sixth Circuit, Eighth Circuit, Ninth Circuit, and Massachusetts Supreme Judicial Court have concluded that the burden of justification rests with the State. See Toledo Area AFL-CIO Council v. Pizza, 154 F.3d 307, 323 (6th Cir. 1998) ("Once it is determined that the state regulation is a substantial impairment . . . the burden shifts to the state . . . [to proffer] such a significant and legitimate public purpose for the regulation . . . [based] upon reasonable conditions . . . justifying [the legislation's] adoption."); Hawkeye Commodity Promotions, Inc. v. Vilsack, 486 F.3d 430, 438

(8th Cir. 2007) ("[If] the State offers no significant and legitimate public purpose . . . then [the legislation] is unconstitutional under the Contract Clause."); Southern California Gas Co. v. City of Santa Ana, 336 F.3d 885, 894 (9th Cir. 2003) ("Because [the City] has substantially impaired its own contract, it has the burden of establishing that the [ ] ordinance is both reasonable and necessary to an important public purpose."); Massachusetts Cmty. Coll. Council v. Commonwealth, 649 N.E.2d 708, 713-14 (Mass. 1995) ("[T]he State has the burden of demonstrating that the impairment was both reasonable and necessary to serve an important State purpose.").

Other courts, including the United States Supreme Court, First Circuit, Fifth Circuit, and Seventh Circuit have used language supporting or indicating a similar conclusion. See U.S. Trust, 431 U.S. at 31 ("In the instant case, the State has failed to demonstrate that repeal of [legislation] was similarly necessary."); Mercado-Boneta, 125 F.3d at 15 ("And the reasonableness inquiry requires a determination that the law is reasonable in light of the surrounding circumstances."); United Healthcare Ins., Co. v. Davis, 602 F.3d 618, 627 (5th Cir. 2010) ("[W]e examine the state's asserted justification for the impairment, which must be a significant and legitimate public purpose."); see also Horwitz-Matthews, Inc. v. City of Chicago, 78 F.3d 1248, 1250 (7th Cir. 1996) (discussing "prima facie impairment and not the issue of justification" as where "most impairment of contracts cases in the modern era have foundered."). Comparatively, this Court has found neither precedent nor reason to alter the established precedent relating to burdens of proof in the Contract Clause test. See 29 Am. Jur. 2d Evidence § 172 (2013) ("A burden of proof and presumption embody distinct legal concepts . . . [and a] presumption should not be used as a surrogate for substantive evidence or as a substitute for satisfying the burden of proof assigned by law.").

Accordingly, in light of the history of the Contract Clause and the precedent and analysis of its sister courts, this Court so too acknowledges the place of justification in the Contract Clause test. Its presence and relationship to the Contract Clause test are well supported. This Court accordingly finds Defendant to have the burden of production for the second and third prongs of the Contract Clause test.

III

CONCLUSION

After consideration of the law and arguments presented, this Court grants Defendant's Motion for Order of Proof but denies the specific order requested by Defendant.

Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Andrews v. Lombardi**
CASE NO:	**KC 2013-1128**
COURT:	**Kent County Superior Court**
DATE DECISION FILED:	**March 18, 2014**
JUSTICE/MAGISTRATE:	**Taft-Carter, J.**
ATTORNEYS:	
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