STATE OF RHODE ISLAND

KENT, SC. **SUPERIOR COURT**

MANUEL ANDREWS, JR, et al., ***Plaintiffs,***	:	
v.	:	**C.A. No. KC-2013-1129**
JAMES J. LOMBARDI, in his capacity as Treasurer of the City of Providence, Rhode Island, ***Defendant***	:	

(FILED: September 30, 2021)

DECISION

TAFT-CARTER, J. This matter is before this Court following an order of remand to the Superior Court from the Rhode Island Supreme Court. The Supreme Court remand instructed this Court "to determine a reasonable length of time for which the [cost-of-living adjustment (COLA)] suspension may remain in effect with respect to [the] plaintiffs who were not affected by prior judicial adjudications."[1] The matter proceeded to trial on May 11, 2021. Jurisdiction is pursuant to G.L. 1956 §§ 8-2-13 and 9-30-1.

[1] The parties previously stipulated to the separation of the Plaintiffs into twelve categories, "grouped by the claimed source of their entitlement to the pension benefits, such as consent judgments, settlement agreements, final court judgments, collective bargaining agreements (CBAs), interest arbitration awards, or implied-in-fact contracts." *Andrews v. Lombardi*, 231 A.3d 1108, 1117, 1127 (R.I. 2020). Together, Categories C, D, and L consist of twenty-nine Plaintiffs whose claims are not based on prior judicial adjudications. Recently, four of the twenty-nine Plaintiffs (Scott Pierce, Ann McDermott (widow of Bruce McDermott), Joseph Barkett, and Brian Hastings) and Defendant have agreed to enter into a Consent Judgment; therefore, this current Decision of the Court applies to the remaining twenty-five Plaintiffs. Consent J., July 16, 2021. For a full description of each category of Plaintiffs, see *Andrews, Jr. v. Lombardi*, No. KC-2013-1128, 2017 WL 532353, at *5-8 (R.I. Super. Feb. 2, 2017).

I

Facts and Travel

The Plaintiffs are retired members of the Providence police and fire departments (Plaintiffs). Plaintiffs challenged the suspension of their COLAs after the enactment of a 2012 municipal ordinance (the 2012 Ordinance) intended to address the fiscal crisis in the City of Providence (City).[2] *Andrews*, 231 A.3d at 1113.

The 2012 Ordinance suspended future COLA benefits until the City's pension fund achieved a 70 percent level of funding. *Id.* at 1115. While many retirees settled their claims against the City by consent judgment, others opted out and pursued claims through litigation. *Id.* In their complaint these Plaintiffs sought declarations that:

> "(1) the City breached its contractual obligations to each plaintiff by refusing to pay the COLAs to which each is entitled; (2) the [2012 Ordinance] is both unconstitutional on its face and as applied because it violates the Contract Clauses, Due Process Clauses, and Takings Clauses of United States Constitution and Rhode Island Constitution; and (3) plaintiffs are entitled to relief under a promissory estoppel theory." *Id.* at 1116.

This Court granted the City's motion for summary judgment with respect to the Plaintiffs' Takings Clause and promissory estoppel claims on March 16, 2016. *Id.* A bench trial was conducted in April 2016 with respect to the remaining claims. *Id.* The Court rendered a decision in February 2017. *Id.* at 1117. In its decision, this Court denied and dismissed Plaintiffs' claims for breach of contract and found that the 2012 Ordinance did not violate the Contract Clause. *Id.*

On appeal, the Rhode Island Supreme Court first examined the effect of the 2012 Ordinance on prior judicial adjudications, which included the Plaintiffs in Categories A, B, and E-

[2] Plaintiffs also filed an action challenging the constitutionality of the 2011 Medicare Ordinance (KC-2013-1128) (Medicare Case). *Id.* at 1116 n.3. Three of the Plaintiffs further filed a petition to hold the City in contempt for violation of the 2004 consent judgment and 1991 consent decree (KC-2013-1127) (Contempt Case). *Id.* at 1116 n.4.

K. *Id.* at 1118. These Plaintiffs were either affected by "the 1991 Consent Judgment, an individual settlement agreement resolving prior litigation in Superior Court, or [the Supreme] Court's opinion in *Arena*." *Id.* at 1122. The Supreme Court determined that the City's "attempt to override these final judgments" by enacting the 2012 Ordinance "was a violation of the doctrine of the separation of powers." *Id.* The Supreme Court then directed this Court to enter judgment in favor of the affected Plaintiffs. *Id.* at 1130.

For the remaining twenty-nine Plaintiffs not covered by judicial adjudications, the Supreme Court analyzed this Court's determination that the 2012 Ordinance did not violate the Contract Clause. *Id.* at 1123. The Supreme Court found that the suspension crafted in the 2012 Ordinance was not reasonable and necessary to achieve the City's important purpose of financial solvency. *Id.* at 1126. In its analysis, the Supreme Court noted that finite COLA suspensions have been found reasonable and necessary. *Id.; see Cranston Police Retirees Action Committee v. City of Cranston*, 208 A.3d 557 (R.I. 2019) (affirming a ten-year COLA suspension). Here, the suspension for an indefinite period of time was deemed unreasonable. *Andrews*, 231 A.3d at 1126.

The Supreme Court noted that the evidence at trial suggested it would take approximately twenty-four years from the enactment of the 2012 Ordinance before funding would achieve the 70 percent threshold. *Id.* The Court noted the expert testimony from William Fornia, an actuary and consultant on pension matters, that mortality tables indicated that more than half of the Plaintiffs would likely die within those twenty-four years. *Id.* Ultimately, the Supreme Court "affirm[ed] . . . the . . . findings that the City faced 'an unprecedented fiscal emergency' and that the [2012 Ordinance] was passed for a 'significant and legitimate public purpose,'" but it found that this Court erred "in finding that the length of time of the COLA suspension was reasonable and necessary to fulfill an important public purpose." *Id.* The Supreme Court therefore remanded with

specific instructions to "determine a reasonable length of time for which the COLA suspension may remain in effect with respect to plaintiffs who were not affected by prior judicial adjudications." *Id.* at 1127.

After remand, on May 11, 2021 this Court conducted a trial in accordance with the Supreme Court's instructions to determine a reasonable length of time for the COLA suspension to remain in effect as to the current Plaintiffs. The parties submitted a Joint Pretrial Memorandum to the Court on April 30, 2021. The parties relied upon the 2016 trial record as well as the Final and Consent Judgment entered by this court in PC-2011-5853 and PC-2012-3590. Joint Ex. 106.

II

Evidence

During the April 2016 trial, this Court heard testimony from numerous witnesses and reviewed a number of exhibits relating to the issue now before this Court.

First, it is clear that a significant amount of credible evidence established that the City faced a dire financial crisis. *See e.g.*, Trial Tr. 1698:5-1699:8; 1703:9-1705:24, Apr. 19, 2016 (Afternoon Session) (Mayor Angel Taveras); Ex. 133 at 3 ("The City's current financial situation is, by all accounts, dire and the severity of the crisis cannot be overstated."). Mayor Taveras's Director of Administration, Michael D'Amico, credibly testified that the City faced an "extraordinarily large" structural deficit that would eventually leave the City with "no choice but to file bankruptcy" if it was not addressed. Trial Tr. 1761:5-1763:6; 1766:19-1767:4, Apr. 20, 2016 (Morning Session).

Credible testimony by Mr. Ernest Almonte, former Auditor General for the State of Rhode Island, demonstrated that the City's pension plan deficits were much more substantial than other cities and towns of the state. For example, by 2010 the City's unfunded pension liability was about $805 million, while the cities of Warwick and Cranston, the next two largest cities in Rhode Island,

had unfunded liabilities of approximately $203 million and $244 million, respectively. Trial Tr. 2220:7-17, Apr. 22, 2016 (Afternoon Session). Further, the City's annual required contribution (ARC) was double that of the city of Cranston. Trial Tr. 2222:13-21. A report released by the Municipal Finances Review Panel in February 2011 concluded that the City's pension plan was only 34 percent funded with an unfunded accrued actuarial liability of $828,484,000. Ex. 104 at 11. This report also revealed an expected ARC in excess of $210 million for the fiscal year ending on June 30, 2039. *Id.* Furthermore, 27 percent of the City's retirees received the benefit of a compounded COLA of 5 or 6 percent. *Id.* at 12.

There also was credible evidence presented as to the steps the City had taken to reduce spending and generate revenue prior to enacting the 2012 Ordinance. Specifically, Mayor Taveras credibly testified what steps he took: reducing his own compensation by taking a 10 percent pay cut, laying off nonunion employees, terminating teachers, closing schools, receiving help from the General Assembly in the form of reimbursement for payment in lieu of taxes, generating fees, increasing parking enforcement, cutting funding to libraries and other departments, and negotiating for increased contributions from tax-exempt universities and hospitals. Trial Tr. 1703:14-1704:5; 1706:2-18, Apr. 19, 2016 (Afternoon Session). Mr. D'Amico also credibly testified that the City generated additional revenue with the assistance of the General Assembly, allowing the City to charge for master fire alarm boxes and to keep more of the money that was generated from traffic violations caught on camera. Trial Tr. 1794:4-11, Apr. 20, 2016 (Morning Session). The testimony of Mayor Taveras and Mr. D'Amico also established that the City's residents and businesses were significantly overtaxed and overburdened at the time the 2012 Ordinance was enacted, and that further tax increases would have an increasingly negative effect on the City's economy. Trial Tr.

1708:1-22, Apr. 19, 2016 (Afternoon Session) (Mayor Taveras); Trial Tr. 1798:10-20, Apr. 20, 2016 (Morning Session) (Mr. D'Amico).

As to what would constitute a reasonable length of time for the COLA suspension, Plaintiffs presented the testimony of Mr. Fornia. Trial Tr. 1206:9-11, Apr. 15, 2016 (Morning Session). Mr. Fornia opined that the pension plan would not reach a healthy funding level, and the COLAs could not be reinstated, until 2036. Trial Tr. 1221:4-23. He also testified that a significant percentage of Plaintiffs would be deceased by the time the COLAs were reinstated in 2036. Trial Tr. 1232:10-17. Thus, Mr. Fornia submitted that a ten-year COLA suspension was a less imposing alternative to the indefinite suspension under the 2012 Ordinance. Trial Tr. 1206:9-11; 1304:22-1305:1, Apr. 15, 2016 (Afternoon Session). Mr. Fornia was the only witness to testify that a finite period for the COLA suspension was reasonable.

III

Parties' Arguments

A

Plaintiffs' Arguments

Plaintiffs first argue that a ten-year COLA suspension with cash stipends is reasonable. Joint Pre-Trial Mem. at 2, 4. This solution, according to the Plaintiffs, is aligned with a settlement that this Court approved in the Final and Consent Judgment entered in *Providence Retired Firefighters v. Lombardi*, PC-11-5853 and PC-12-3590 on April 12, 2013. That settlement provided for a ten-year COLA suspension ending on January 1, 2023, along with cash stipends to be paid in 2018 and 2020, respectively, which this Court found to be "fair, adequate and *reasonable*." *Id.* at 2 (emphasis added) (quoting Final and Consent J. at 5). Plaintiffs argue that because Defendant "litigated the identical issue" of reasonableness at the fairness hearing,

Defendant is now collaterally estopped from challenging the reasonableness of the COLA suspension in the instant matter. *Id.* at 2-3.

Recognizing that their suggestion that the City pay stipends "may seem at first glance to be beyond the scope of the Supreme Court's remand directive[,]" Plaintiffs offer an alternative solution: a nine-year suspension without stipends. *Id.* at 3-4. Plaintiffs argue that a nine-year suspension would be "fair and consistent with the Final and Consent Judgment" if this Court were to determine that their first suggestion is unattainable due to the limited scope of the Rhode Island Supreme Court's remand directive. *Id.* at 3.

B

Defendant's Arguments

Defendant argues that, at minimum, a ten-year suspension without a cash stipend is reasonable based on the evidence presented at the April 2016 trial regarding the City's dire financial situation and the precedent established when a finite COLA suspension was upheld in *Cranston*. *See id.* at 6-13, 15-24. Defendant further contends that the Court's analysis of this question "need not be overly searching" because Plaintiffs' expert, the Plaintiffs, and this Court's prior decision in *Cranston* all agree that a ten-year COLA suspension is "reasonable and passes constitutional muster." *Id.* at 15.

To support its argument as to reasonableness, Defendant points to several facts established at the April 2016 trial. Specifically, Defendant cites to "unchallenged record evidence concerning the City's fiscal crisis in 2011 and 2012" as well as testimony concerning the City's structural deficit. *Id.* at 16. Defendant also highlights the fact that it carefully considered alternatives to the 2012 Ordinance but concluded that the other changes would not solve its financial issues. *Id.* at 17-19.

In support of the ten-year COLA suspension, the Defendant analogizes the City's situation to that of the city of Cranston by highlighting that both cities' fiscal concerns were complicated by a drop in state aid and that both cities took multiple steps to address their issues before enacting a COLA suspension. *Id.* at 22. Defendant further contends that the fiscal crisis faced by the City was worse than the one at issue in *Cranston*, as the City's 2011 unfunded pension liability was $828 million, "more than three times that of [the city of] Cranston." *Id.* at 24. Moreover, Defendant asserts that while the city of Cranston faced 3 percent annual compounding COLAs, the City faced 5 percent and 6 percent annual compounding COLAs. *Id.* Consequently, Defendant argues, "[t]he same logic that justified [the city of] Cranston's ten year suspension provides *a fortiori* justification for at least a ten year suspension in Providence." *Id.*

IV

Standards of Review

A

Cases on Remand

The Rhode Island Supreme Court has held that "'it is not the role of a trial justice to attempt to read between the lines of [the Supreme Court's] decisions.'" *State v. Arciliares*, 194 A.3d 1159, 1162 (R.I. 2018) (quotation omitted). Instead, "'lower courts . . . that receive . . . remand orders may not exceed the scope of the remand or open up the proceeding to legal issues beyond the remand.'" *Id.* (quoting *Butterfly Realty v. James Romanella & Sons, Inc.*, 93 A.3d 1022, 1031-32 (R.I. 2014)).

"'When a case has been once decided by [the Supreme Court] on appeal, and remanded to the [Superior Court], . . . [the Superior Court] . . . cannot . . . intermeddle with it, further than to settle so much as has been remanded.'" *Butterfly Realty*, 93 A.3d at 1032 (quoting *Pleasant*

Management LLC v. Carrasco, 960 A.2d 216, 223 (R.I. 2008)). Specifically, "'whatever was before [the Supreme Court] . . . is considered as finally settled,'" and "'[t]he [Superior Court] is bound by the decree as the law of the case, and must carry it into execution according to the mandate.'" *Pleasant Management LLC*, 960 A.2d at 223 (quoting *United States v. Thrasher*, 483 F.3d 977, 981 (9th Cir. 2007)).

B

Third Prong of Contracts Clause Analysis

The Rhode Island Supreme Court "has adopted the United States Supreme Court's three-part analysis for Contract Clause claims." *Hebert v. City of Woonsocket*, 213 A.3d 1065, 1085 (R.I. 2019) (citing *Nonnenmacher v. City of Warwick*, 722 A.2d 1199, 1202 (R.I. 1999)). The final prong of the analysis requires this Court to determine whether a substantial contract impairment "'is reasonable and necessary to fulfill an important public purpose.'" *Id.* (quoting *Cranston*, 208 A.3d at 572).

While the Plaintiffs bear the burden of production for the first two prongs of the analysis, that burden shifts to the Defendant for the third prong. *See Cranston*, 208 A.3d at 573. Under this third prong, Defendant must provide credible evidence sufficient to demonstrate that the 2012 Ordinance was reasonable and necessary to fulfill an important public purpose. *See Andrews*, 231 A.3d at 1123. Should Defendant meet this burden, the burden of production once again shifts back to Plaintiffs, who must rebut the evidence by showing, beyond a reasonable doubt, that Defendant's actions were not reasonable and necessary to fulfill a legitimate and significant purpose. *See id.* at 1123-24. Despite the shifting of the burden of production, the burden of persuasion remains with the Plaintiffs throughout. *Hebert*, 213 A.3d at 1086; *see also Parella v. Montalbano*, 899 A.2d 1226, 1232-33 (R.I. 2006) ("[E]very statute enacted by the Legislature is

presumed constitutional and will not be invalidated by this Court unless the party challenging the statute proves *beyond a reasonable doubt* that the legislative enactment is unconstitutional.") (emphasis in original); *Dowd v. Rayner*, 655 A.2d 679, 681 (R.I. 1995) ("[T]he party challenging the constitutional validity of a statute carries the burden of persuading the court beyond a reasonable doubt[.]").

V

Analysis

A

Collateral Estoppel

While the parties argue for distinct but similar results as to what constitutes a reasonable and necessary COLA suspension, each party rests its argument on a different legal basis. Plaintiffs argue that this Court's prior ruling in *Providence Retired Firefighters v. Lombardi,* PC-11-5853 and PC-12-3590 and entry of the Final and Consent Judgment determined a reasonable length of time for the COLA suspension. Joint Pre-Trial Mem. at 2-3. Plaintiffs assert that the Court considered the question of the reasonableness of a ten-year suspension with stipends at the fairness hearing. *Id.* at 3. The Plaintiffs maintain that because Defendant was a party to the Final and Consent Judgment, the Defendant "is bound not to challenge the conclusion that a ten-year-suspension-plus-stipends is reasonable" under the doctrine of collateral estoppel. *Id.*

"'The doctrine of collateral estoppel provides that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit.'" *State v. Minior,* 175 A.3d 1202, 1206 (R.I. 2018) (quoting *State v. Pacheco,* 161 A.3d 1166, 1172 (R.I. 2017)). "Collateral estoppel applies where there exists '(1) an identity of issues, (2) the previous proceeding must have resulted in a final judgment on

the merits, and (3) the party against whom collateral estoppel is asserted must be the same or in privity with a party in the previous proceeding.'" *Id.* (emphasis omitted) (quoting *Pacheco*, 161 A.3d at 1172).

"An identity of issues requires 'first, [that] the issue sought to be precluded must be identical to the issue decided in the prior proceeding; second, the issue must actually [have been] litigated; and third, the issue must necessarily have been decided.'" *Pacheco*, 161 A.3d at 1173 (quoting *State v. Godette*, 751 A.2d 742, 746 (R.I. 2000)). For an issue to be "actually litigated," there must be "'a specific finding. . . . A general finding will not suffice.'" *Id.* at 1175 (emphasis omitted) (quoting *State v. Chase*, 588 A.2d 120, 132 (R.I. 1991)); *see also Ferguson v. Marshall Contractors, Inc.*, 745 A.2d 147, 154 (R.I. 2000) (quoting *State v. Pineda*, 712 A.2d 858, 862 (R.I. 1998)) ("This Court has held that, in determining whether there has been a final judgment on the merits, '[a] general finding will not suffice, nor will a specific finding that was not fully litigated unless the [party] had notice that the issue was to be litigated fully at the hearing and had a fair opportunity to do so.'").

In *Providence Retired Firefighters v. Lombardi*, PC-11-5853 and PC-12-3590, this Court presided over a fairness hearing "to consider the settlement embodied in [the] Final and Consent Judgment . . . and any objections thereto[.]" Final and Consent J. at 4. In the Final and Consent Judgment, "for the reasons stated on the record at the hearing, the Court overruled any objections and found the Settlement fair and reasonable." *Id.* Therefore, this Court granted "final approval of the Settlement . . . [and found] and determine[d] that the Settlement [was] fair, adequate and reasonable[.]" *Id.* at 5.

While Plaintiffs contend that the issue currently before this Court and the issue before it when it entered the Final and Consent Judgment are identical, they are not. When entering the

Final and Consent Judgment in *Providence Retired Firefighters*, the posture of that case required this Court to consider the specific class-action settlement agreement presented to it by the parties. *See, e.g., Clifford v. Raimondo*, 184 A.3d 673, 691 (R.I. 2018) (quoting *Bezdek v. Vibram USA, Inc.*, 809 F.3d 78, 82 (1st Cir. 2015)) ("While there are a number of factors a trial justice may use to decide whether a settlement is reasonable, 'the ultimate decision by the judge involves balancing the advantages and disadvantages of the proposed settlement as against the consequences of going to trial or other possible but perhaps unattainable variations on the proffered settlement.'"). In the instant case, the Court has been tasked by the Rhode Island Supreme Court with determining "a reasonable length of time" for a COLA suspension as to those Plaintiffs who opted out of the settlement agreement but who are not affected by prior judicial adjudications. *See Andrews*, 231 A.3d at 1127. Without the requisite identity of issues, Plaintiffs' collateral estoppel argument fails on the first prong of the analysis. *See Pacheco*, 161 A.3d at 1172-73.

B

Reasonable Length of Time for Suspension of COLA

Alternatively, Plaintiffs argue that a remedy that is fair and consistent with the Final and Consent Judgment is a nine-year COLA suspension. Joint Pre-Trial Mem. at 3.

Defendant, however, suggests that a minimum of ten years is a reasonable length of time for the COLA suspension. *Id.* at 7. Defendant relies on the evidence presented at the April 2016 trial concerning the City's financial crisis as well as the Supreme Court's opinion in *Cranston. See id.* at 6-13, 15-24.

Plaintiffs' sole challenge on appeal was this Court's finding under the third prong of the Contract Clause analysis: "whether the 2012 . . . Ordinance suspending the COLAs until the pension fund reaches a 70 percent funding level was a reasonable and necessary action to achieve

an important public purpose." *Andrews*, 231 A.3d at 1124. Thus, this Court need not examine the first two prongs of the Contract Clause test.

Even if the challenged impairment serves a significant and legitimate purpose, this Court must continue its Contract Clause analysis to ensure that the suspension of the COLA is "specifically tailored to 'meet the societal ill it is supposedly designed to ameliorate.'" *Kent v. New York*, No. 1:11-CV-1533, 2012 WL 6024998, at *21 (N.D.N.Y. Dec. 4, 2012) (quoting *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 243 (1978)). Because this case involves a public contract, this Court affords "less deference" to the Defendant. *Buffalo Teachers Federation v. Tobe*, 464 F.3d 362, 370-71 (2d Cir. 2006). However, "less deference does not imply no deference." *Id.* at 370. Thus, in order for the suspension of the COLA

> "to be reasonable and necessary under *less deference scrutiny*, it must be shown that the state did not (1) 'consider impairing the * * * contracts on par with other policy alternatives' or (2) 'impose a drastic impairment when an evident and more moderate course would serve its purpose equally well,' nor (3) act unreasonably 'in light of the surrounding circumstances[.]'" *Id.* at 371 (quoting *United States Trust Company of New York v. New Jersey*, 431 U.S. 1, 30-31 (1977)).

In considering the reasonableness of the length of time for the COLA suspension, the Court must conclude that the suspension was enacted "only after other alternatives had been considered and tried." *Id.* Moreover, this Court must determine whether a "more moderate course" was available. *Id.* To analyze this factor, this Court must examine whether the length of time for the COLA suspension is narrowly tailored in order to impose no greater impairment than necessary, as well as whether it is less drastic than at least one other alternative. *See Baltimore Teachers Union v. Mayor and City Council of Baltimore*, 6 F.3d 1012, 1020 (4th Cir. 1993). Finally, to determine whether the suspension of the COLA is reasonable in light of the surrounding circumstances, "[t]he extent of [the] impairment is certainly a relevant factor in determining its

reasonableness." *U.S. Trust Company of New York*, 431 U.S. at 27. Moreover, "the existence of an emergency and the limited duration of a relief measure are factors to be assessed in determining the reasonableness of an impairment[.]" *Id.* at 22 n.19; *see also Energy Reserves Group, Inc. v. Kansas Power and Light Co.*, 459 U.S. 400, 418-19 (1983) (finding contractual impairment justified where a regulation is temporary).

In conducting this analysis, this Court finds *Cranston* instructive. In *Cranston*, when Mayor Allan Fung took office in 2009, the city of Cranston "was in 'dire' fiscal condition." *Cranston*, 208 A.3d at 566. The city of Cranston's pension system was 16.9 percent funded and the unfunded accrued liability of the pension plans was $256 million. *Id.* Under the existing pension plan, retirees received the benefit of a compounded COLA of 3 percent. *Id.* Furthermore, state aid to the city of Cranston had decreased by $18 million between 2007 and 2011. *Id.* at 569. The ordinance at issue in *Cranston* was a "temporary ten-year suspension," which affected "only the 3% compounded COLA and le[ft] intact all other components of the pension." *Cranston Police Retirees Action Committee v. City of Cranston*, No. KC-2013-1059, 2016 WL 4059309, at *19 (R.I. Super. July 22, 2016.). These circumstances allowed this Court to conclude that the ordinance was "reasonable under the circumstances." *Id.* at *20. Specifically, this Court was "satisfied" the ordinance was reasonable "'[i]n light of the magnitude and timing of the . . . cuts in state funding that prompted [the city of Cranston's ordinance], . . . [the city of Cranston's] concerted efforts to exhaust numerous alternative courses of cost reduction before resorting to the challenged reductions, [and] the circumscribed nature of the . . . plan.'" *Id.* (quoting *Baltimore Teachers Union*, 6 F.3d at 1022).

On appeal, the Supreme Court in *Cranston* agreed with this Court's conclusion that the ordinance suspending COLAs for ten years was "narrowly tailored to the problem and that the

impairment was temporary and prospective in nature because the 2013 ordinances suspended a *future* benefit for a finite period of time." *Cranston*, 208 A.3d at 578. The Supreme Court further reasoned that the ordinances at issue in that case "did not eliminate the COLA benefit altogether, and only affected COLAs not yet made available to retirees." *Id.* Ultimately, the Court determined that the "impairment was reasonable in light of the circumstances." *Id.*

Furthermore, the Supreme Court emphasized the fact that the COLA suspension upheld in *Cranston* was "temporary in nature" due to its "definitive" length of ten years. *Andrews*, 231 A.3d at 1126 ("In upholding the ordinance suspending COLA benefits in *Cranston*, we placed great emphasis on the fact that the suspension was for a finite period of time[.]") (citing *Cranston*, 208 A.3d at 578). Contrasting this case to *Cranston*, the Supreme Court stated, "[h]ere, the COLA suspensions were for an indefinite period of time, i.e., until the pension plan becomes 70 percent funded." *Id.* The Supreme Court further noted Mr. Fornia's testimony that "mortality tables indicated that more than half of the plaintiffs, thirty-eight of the sixty-seven, will have died by the time the pension plan attains 70 percent funding." *Id.* The Court concluded that "[t]he suspension of COLAs can hardly be called temporary for those pensioners." *Id.*

After reviewing the evidence presented at the April 2016 trial, this Court concludes that a ten-year COLA suspension is reasonable and necessary. It is clear, based upon the Supreme Court decision, that a COLA suspension must have a definitive end. Here, the trial record is devoid of evidence that would justify a COLA suspension longer than ten years. A ten-year suspension is a finite period of time that is reasonable and necessary under the requisite factors. *See Buffalo Teachers Federation*, 464 F.3d at 371.

First, there was sufficient credible evidence presented at trial demonstrating that the City had considered and tried various other policy alternatives, which leads this Court to conclude that

a ten-year suspension of the COLA would not be considered "on par with other policy alternatives." *See id.* For example, the Court heard from Mayor Taveras about the numerous and significant steps he took in order to cut spending and generate revenue, such as reducing his compensation by 10 percent, renouncing his elected official pension, closing schools, and receiving help from the General Assembly. Trial Tr. 1703:14-1704:5; 1706:2-18, Apr. 19, 2016 (Afternoon Session); *see also* Trial Tr. 1794:4-14, Apr. 20, 2016 (Morning Session) (Mr. D'Amico testifying that the City sought state legislation to generate more revenue from master fire alarm boxes and traffic violations and negotiated with tax-exempt hospitals and colleges for increased payments in lieu of taxes). Moreover, Mayor Taveras credibly testified that the only other way for the City to cut revenue would be to stop funding libraries and recreational centers, but that such a choice would not solve the problem, could be detrimental to the City's youth, and could increase crime. Trial Tr. 1714:3-9, Apr. 19, 2016 (Afternoon Session); Trial Tr. 2208:17-25, Apr. 22, 2016 (Morning Session). Thus, credible evidence demonstrates that the City did not consider a suspension of the COLA to be on par with other policy alternatives. *See Buffalo Teachers Federation*, 464 F.3d at 372 ("[W]e find no need to second-guess the wisdom of picking the wage freeze over other policy alternatives, especially those that appear more Draconian, such as further layoffs or elimination of essential services.").

As to whether a more moderate course was available to the City, it is clear that the City "presented sufficient credible evidence" that no such option existed. *Andrews, Jr.*, 2017 WL 532353, at *26. Specifically, the City presented evidence demonstrating that its unfunded pension liability was largely due to retired rather than active employees, that the 2012 Ordinance would "immediately achieve a $15.6 million reduction in the ARC," and that no other option under consideration would have a remotely comparable effect. *Id.* On this issue, Plaintiffs presented the

testimony of Mr. Fornia, who "suggested that a ten-year COLA suspension . . . like that contained in the [Final and Consent Judgment] . . . was a less imposing alternative . . . than waiting until the funded ratio reaches 70%, which Mr. Fornia testified would not occur until 2036." *Id.* Based on the trial record, no other finite period of years was offered as a specific alternative to the 70 percent funding provision of the 2012 Ordinance. Clearly, a ten-year suspension is significantly shorter than the twenty-four years that Mr. Fornia predicted it would take for the pension plan to reach a healthy funding level. Trial Tr. 1221:4-23, Apr. 15, 2016 (Morning Session). The definitive end date of a ten-year COLA suspension is also a less imposing alternative to the indefinite suspension mandated under the 2012 Ordinance. Trial Tr. 1304:22-1305:1, Apr. 15, 2016 (Afternoon Session); *Buffalo Teachers Federation*, 464 F.3d at 371.

Finally, in light of the surrounding circumstances, this Court finds that a temporary and prospective ten-year suspension is both reasonable and necessitated by the fiscal crisis the City faced. *See U.S. Trust Co.*, 431 U.S. at 22 n.19, 27, 30-31; *Energy Reserves Group*, 459 U.S. at 418-19; *Buffalo Teachers Federation*, 464 F.3d at 371-72. The record is certainly riddled with clear and credible evidence that the City faced a financial emergency of the highest order. *See e.g.*, Trial Tr. 1711:12-24, 1714:15-1715:1, Apr. 19, 2016 (Afternoon Session) (Mayor Taveras) (discussing bankruptcy as a "real potential" for the City that could have caused "devastating cut[s]" to retirees' pensions); Ex. 133 at 3 ("The City's current financial situation is, by all accounts, dire and the severity of the crisis cannot be overstated."); Trial Tr. 2222:13:24, Apr. 22, 2016 (Afternoon Session) (Mr. Almonte); Ex. 104 at 11-12; *see also Andrews*, 231 A.3d at 1126 ("Regardless of how the City landed in the fiscal position it was in when Mayor Taveras took office in January 2011, there is no doubt that drastic financial measures had to be taken to address the situation.").

Moreover, a ten-year suspension is reasonable because the financial circumstances the City faced were comparable to those at issue in *Cranston*, if not worse. *See, e.g.*, Trial Tr. 2217:13-14 (Mr. Almonte) ("[T]he numbers in Providence absolutely dwarfed what took place in Cranston."). Specifically, in 2010 the City's pension plan was 34 percent funded with an unfunded pension liability of $828,484,000, while in 2011 the city of Cranston's pension plan was 16.9 percent funded with $256 million in unfunded accrued liability. Ex. 104 at 11; *Cranston*, 208 A.3d at 566. From 2007 to 2011, annual state aid to the City fell by almost $40 million; over that same period, annual state aid to the city of Cranston fell by approximately $18 million. Ex. 111; Ex. 115. Furthermore, 27 percent of the City's retirees received the benefit of an annual compounded COLA of 5 or 6 percent; in the city of Cranston, all retirees received an annual compounded COLA of 3 percent. Ex. 104 at 12; *Cranston*, 208 A.3d at 566.

In addition, there is clear precedent that a ten-year COLA suspension "was reasonable in light of the circumstances." *Cranston*, 208 A.3d at 578 ("[W]e agree with the trial justice's conclusions that the 2013 ordinances were narrowly tailored to the problem and that the impairment was temporary and prospective in nature because the 2013 ordinances suspended a *future* benefit *for a finite period of time*.") (second emphasis added). Given the trial evidence as well as the precedent, a temporary ten-year COLA suspension is reasonable here as well.

Therefore, based on the competent trial record, and considering the specific mandate of the Supreme Court, this Court finds that ten years is "a reasonable length of time for which the COLA suspension may remain in effect with respect to plaintiffs who were not affected by prior judicial adjudications." *Andrews*, 231 A.3d at 1127.

VI

Conclusion

For the reasons stated above, the Court concludes that a ten-year COLA suspension is a reasonable length of time for the Plaintiffs who were not affected by prior judicial adjudications. Counsel shall submit an appropriate order.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Andrews v. Lombardi**
CASE NO:	**KC-2013-1129**
COURT:	**Kent County Superior Court**
DATE DECISION FILED:	**September 30, 2021**
JUSTICE/MAGISTRATE:	**Taft-Carter, J.**
ATTORNEYS:	
For Plaintiff:	**Thomas M. Dickinson, Esq.; Lauren E. Jones, Esq.; Kevin F. Bowen, Esq., Thomas J. McAndrew, Esq.**
For Defendant:	**William M. Dolan, Esq.; Kenneth B. Chiavarini, Esq.; Matthew T. Jerzyk, Esq.; Jeffrey M. Padwa, Esq.,; William K. Wray, Jr., Esq.**