

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: March 18, 2015)

In re Pension Cases	:	C.A. No. PC 10-2859
	:	PC 12-3166
	:	PC 12-3167
	:	PC 12-3168
	:	PC 12-3169
	:	PC 12-3579
	:	KC 14-0345
	:	PC 14-4343
	:	PC 14-4768

DECISION

TAFT-CARTER, J. Before this Court are the Plaintiffs’ Consolidated Motion in Limine as to the Burden of Proof on their Contract Clause Claim; the State Defendants’ objection to the Plaintiffs’ Consolidated Motion; the State Defendants’¹ own Motion in Limine as to the Burden of Proof for Contract Clause claims; and the Municipal Defendants’ Objection to the Plaintiffs’ Consolidated Motion.²

¹ The State Defendants are Gina Raimondo, in her capacity as Governor of the State of Rhode Island, Seth Magaziner, in his capacity as General Treasurer, the Employees Retirement System of Rhode Island (ERSRI) by and through the Retirement Board, and Frank J. Karpinski, in his capacity as Secretary of the Retirement Board.

² The municipal Defendants and Defendant, the City of Cranston, in the cases docketed as C.A. Nos. PC 12-3166, PC 14-4343, and PC 14-4768, have also objected to the Plaintiffs’ Motion in Limine. The municipal Defendants consist of some twenty-nine municipal entities which have collective bargaining agreements with one or more of the individual Plaintiffs in these cases and have been joined as indispensable parties to these actions. The State Defendants, municipal Defendants, and the City of Cranston will be referred to collectively as the Defendants.

I

Facts and Travel

These consolidated cases are collectively known as the Pension Cases. The pertinent facts underlying these lawsuits are outlined in this Court's prior decisions relating to Defendants' Motion for Summary Judgment and Defendants' motion for a more definite statement. See, e.g., R.I. Council 94 v. Carcieri, 2011 WL 4198506 (R.I. Super. Sept. 13, 2011) (denying the defendants' motion for summary judgment and finding that the plaintiff state and local employees were parties to an implied contract with the state) (Pension I); R.I. Council 94 v. Chafee, 2014 WL 1743149 (R.I. Super. Apr. 25, 2014) (denying the defendants' motion for a more definite statement and motion to dismiss for failure to state a claim); Rhode Island Public Emps.' Retiree Coal. v. Chafee, 2014 WL 1577496 (R.I. Super. Apr. 16, 2014) (denying the defendants' motion to dismiss); Bristol/Warren Reg'l Sch. Emps. v. Chafee, 2014 WL 1743142 (R.I. Super. Apr. 25, 2014) (denying the defendants' motion for a more definite statement and motion to dismiss). This Court incorporates by reference its recounting of the facts in its previous decisions.

The parties have each filed separate Motions in Limine asking this Court to rule on the appropriate burden of proof for the Plaintiffs' Contract Clause claims at trial. This Court heard oral arguments on March 6, 2015 and now issues its Decision.

II

Analysis

In these motions in limine, the parties have asked the Court to develop the order of the trial by allocating the parties' burden of proof. The Plaintiffs argue that the burden of proof for their Contract Clause claim should follow the structure set forth in this Court's prior decision in

an unrelated case, Andrews v. Lombardi, 2014 WL 1120350 (R.I. Super. Mar. 18, 2014). In that case, the Court found that the defendant had the burden of production for the second and third prong of the Contract Clause test. See id. at *7. The Andrews case is distinguishable from this case in both its procedural posture as well as the arguments advanced at hearing. The case is non-binding and as such will not be addressed further.

The Defendants argue that the Plaintiffs bear the burden of proving each and every element of the Contract Clause beyond a reasonable doubt. The argument is premised on the precedent established by our Supreme Court, as well as a recent case which reiterated that “every 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.” Parella v. Montalbano, 899 A.2d 1226, 1232-33 (R.I. 2006) (emphasis in original). In Parella, our Supreme Court affirmed that the trial court “was correct in allocating this time-honored burden of proof—beyond a reasonable doubt—to the plaintiffs.” Id. at 1233. According to the Defendants, the presumption of constitutionality requires that the burden of proof remain on the Plaintiffs to prove every element of their Contract Clause claim beyond a reasonable doubt, and that no portion of this burden may be shifted.

It is well-settled that legislative enactments are presumed to be constitutional. See Narragansett Indian Tribe v. Rhode Island, No. 12-322-A (R.I. Mar. 4, 2015) (“[L]egislative enactments of the General Assembly are presumed to be valid and constitutional.”); see also City of Pawtucket v. Sundlun, 662 A.2d 40, 45 (R.I. 1995) (“[A]ll laws regularly enacted by the Legislature are presumed to be constitutional and valid.”). This presumption is such that “the 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.”

Dowd v. Rayner, 655 A.2d 679, 681 (R.I. 1995). Therefore, the party challenging the constitutionality of a statute carries the heaviest burden of persuasion.

The Defendants argue that because the Supreme Court has imposed a beyond a reasonable doubt standard on the constitutional challenge, the entire burden of proof on the Plaintiffs' Contract Clause challenge is allocated to the Plaintiffs. The premise is that any alteration in the burden of proof would nullify the presumption of constitutionality. This argument fails for two reasons. It does not take into account the distinction between the burden of persuasion and the burden of production. In addition, it fails to recognize the historical reasoning of the justification prong of the Contract Clause analysis.

The burden of proof encompasses two 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).

The burden of proof “comprise[s] the burdens of production and persuasion.” 29 Am. Jur. 2d Evidence § 171 (2013). “The term ‘burden of production’ tells a court which party must come forward with evidence to support a particular proposition, whereas ‘burden of persuasion’ determines which party must produce sufficient evidence to convince a judge that a fact has been established.” Id. Clearly, the Plaintiffs have the burden of persuasion as to the constitutionality of the statute, and as such, “in analyzing a statute’s constitutionality, ‘every presumption must be indulged to sustain the law if at all possible and whatever doubt exists as to the legislative enactment’s constitutionality, it must be resolved in favor of constitutionality.’” Chappy v. Labor and Indus. Review Comm’n, Dep’t of Indus., Labor, and Human Relations, 401 N.W.2d

568, 574 (Wis. 1987). The burden of persuasion assigned to a party challenging the constitutionality of a statute is stringent and is upon the plaintiffs.

The burden of production is a different concept. The allocation of the burden of production in this Contract Clause challenge requires a consideration of the three-prong analysis for Contract Clause claims. The Contract Clause of the Rhode Island Constitution, like its federal counterpart, prohibits laws that impair contractual obligations. See In re Advisory Op. to the Governor (DEPCO), 593 A.2d 943, 948 (R.I. 1991). It has been recognized that the Framers placed a “high value . . . on the protection of private contracts.” Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 245 (1978). The police power does not, therefore, allow unlimited modifications to private contracts. See Welch v. Brown, 935 F. Supp. 2d 875, 881 (E.D. Mich. 2013). “However, not all impairments of contract run afoul of the Constitution.” Id. Courts must consider whether a particular law, here, RIRSA, operated as a substantial impairment of a contractual relationship. Energy Reserves Grp., Inc. v. Kansas Power & Light Co., 459 U.S. 400, 411 (1983). The three-part analysis synchronizes “the command of the 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) (quoting U.S. Trust Co. v. New Jersey, 431 U.S. 1, 21 (1977)). In considering a Contract Clause claim, courts must 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?” In re Advisory Op. to the Governor (DEPCO), 593 A.2d at 949 (internal citations omitted).

In order for the impairment of a contract to be justified, courts have required that the impairment be “both reasonable and necessary to serve the admittedly important purposes claimed by the State.” U.S. Trust, 431 U.S. at 29.³

Throughout the rubric established by the Supreme Court to assess Contract Clause claims are woven principles that reflect the conflicting values of protecting the right of individuals to order their affairs by contract and “allowing the state to exercise ‘essential attributes of sovereign power which are necessarily reserved by the state to safeguard their citizens.’” Toledo Area AFL-CIO Council v. Pizza, 154 F.3d 307, 323 (6th Cir. 1998) (quoting Linton by Arnold v. Comm’r of Health and Env’t, 65 F.3d 508, 517 (6th Cir. 1995)). To achieve this goal, it becomes necessary to shift the burden of production after the plaintiffs prove beyond a reasonable doubt that the legislation is a substantial impairment of their contractual rights.

To be sure, the Contract Clause jurisprudence establishes that the plaintiffs bear the threshold burden of production in establishing that the legislation constitutes a substantial impairment of a contract. See Retired Adjunct Professors of the State of R.I. v. Almond, 690 A.2d 1342, 1344-45 (R.I. 1997); Nonnenmacher v. City of Warwick, 722 A.2d 1199, 1203-04 (R.I. 1999). Further, consistent with our Supreme Court’s established jurisprudence, plaintiffs must establish a substantial impairment beyond a reasonable doubt. See Parella, 899 A.2d at 1233; see also Dairyland Greyhound Park v. Doyle, 719 N.W.2d 408, 430 (Wis. 2006) (“To demonstrate that a contract has been unconstitutionally impaired, a complaining party must first

³ Our Supreme Court has adopted the same three-prong analysis for Contract Clause claims under the Rhode Island Constitution. See Brennan v. Kirby, 529 A.2d 633, 638 n.7 (R.I. 1987) (stating that as the Contract Clause of the Rhode Island Constitution “mirrors the Contract Clause of the United States Constitution ... we will rely on federal case authority in this area.”).

establish beyond a reasonable doubt that the legislature changed the law after the formation of the contract and that the operation of the contract is substantially impaired by this change.”).

In the event that the plaintiffs fail to meet the burden on this prong, the analysis ends. In the event that a substantial impairment of a contract has been established, the burden of production then shifts to the state to provide a “significant and legitimate public purpose” for the legislation. Toledo Area AFL-CIO, 154 F.3d at 323; see also Energy Reserves Grp., 459 U.S. at 411 (“If the state regulation constitutes a substantial impairment, the State, in justification, must have a significant and legitimate public purpose behind the regulation.”); 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.”); Univ. of Hawaii Prof'l Assembly v. Cayetano, 183 F.3d 1096, 1106 (9th Cir. 1999) (“Defendants bear the burden of proving that the impairment was reasonable and necessary because ‘the burden is placed on the party asserting the benefit of the statute only when that party is the state.’”); McGrath v. R.I. Ret. Bd., 906 F. Supp. 749, 764 (D.R.I. 1995) (“Only if the impairment is substantial will the Court continue its inquiry and require the state to justify the impairment as reasonable and necessary to serve an important government purpose.”) (internal citations omitted).

The level of deference the legislature is given depends upon whether the contract is between private parties or the state. “[W]here a state’s self-interest is implicated, the court will look to see whether the state’s self-interest makes the defense of necessity and reasonableness inappropriate.” Welch, 935 F. Supp. 2d at 881 (citing Toledo Area AFL-CIO, 154 F.3d at 323). Complete deference is not given to the state when the state is a party to the contract. See U.S. Trust, 431 U.S. at 25-26.

The Defendants, however, maintain that the Plaintiffs bear the burden of production on each and every element of the Contract Clause. There is precedent from other courts which allocates the burden of persuasion to the standard of beyond a reasonable doubt which also recognizes that the burden of production or “the burden of going forward with the evidence” shifts as the case progresses. Murphy, 454 A.2d at 250. The concept of shifting the burdens of production in cases where plaintiffs bear the burden of establishing the unconstitutionality of a statute beyond a reasonable doubt is consistent with Contract Clause claims. See, e.g., Pierce Cnty. v. State, 148 P.3d 1002, 1009, 1015 (Wash. 2006) (stating that a party challenging a statute’s constitutionality bears the heavy burden of proving that there is no reasonable doubt that the statute violates the Constitution while stating in its Contract Clause analysis that the justifications for the reasonableness and necessity of the challenged statute must first be offered by those defending the statute’s constitutionality); Dairyland Greyhound Park, 719 N.W.2d at 430-31 (stating that “[t]o demonstrate that a contract has been unconstitutionally impaired, a complaining party must first establish beyond a reasonable doubt that the legislature changed the law after the formation of the contract and that the operation of the contract is substantially impaired by this change,” and that “if a law substantially impairs an already existing contractual relationship, the state, in justification, must have a significant and legitimate public purpose for the legislation”); Jacobsen v. Anheuser-Busch, Inc., 392 N.W.2d 868, 872 (Minn. 1986) (acknowledging—before stating that for Contract Clause purposes, “if a substantial impairment exists, those urging the constitutionality of the legislative act must demonstrate a significant and legitimate public purpose behind the legislation”—that “the burden rests with the challenger to demonstrate beyond a reasonable doubt that the challenged Act violates a constitutional provision”).

The approach taken by other courts in these cases correctly reflects the development of Contract Clause jurisprudence with a due consideration for the purpose of the Contract Clause as a limitation on state power. See Manigault v. Springs, 199 U.S. 473, 480 (1905) (“[T]he interdiction of statutes impairing the obligation of contracts does not prevent the State from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected.”). The United States Supreme Court has recognized that “[i]f the Contract Clause is to retain any meaning at all, however, it must be understood to impose some limits upon the power of a State to abridge existing contractual relationships, even in the exercise of its otherwise legitimate police power.” Spannaus, 438 U.S. at 242 (emphasis in original). Accordingly, the development of Contract Clause jurisprudence mirrors the ways in which courts have “accommodate[d] [the Contract Clause] to the inherent police power of the State ‘to safeguard the vital interests of its people.’” Energy Reserves Grp., 459 U.S. at 410 (quoting Home Bldg. & Loan Ass’n v. Blaisdell, 290 U.S. 398, 434 (1934)). Recognizing 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 “if it is reasonable and necessary to serve an important public purpose.” U.S. Trust, 431 U.S. at 25.

The Defendants also cite to United Auto., Aerospace, Agric. Implement Workers of Am. Int’l Union v. Fortuño for its holding that “where plaintiffs sue a state . . . challenging the state’s impairment of a contract to which it is a party, the plaintiffs bear the burden on the reasonable/necessary prong of the Contract Clause analysis.” 633 F.3d 37, 42 (1st Cir. 2011). Fortuño is inapplicable to the instant case. First, the case was decided under the procedural

posture of a Fed. R. Civ. P. 12(b)(6) motion to dismiss and, as such, applied the heightened pleading standard adopted by the United States Supreme Court in Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007). The heightened pleading standard applied in Fortuño has not been adopted in Rhode Island. See DiLibero v. Mortg. Elec. Registration Sys., Inc., No. 2013-190-A (R.I. Jan. 14, 2015) (stating that Rhode Island has not yet adopted the heightened pleading standard but continues to adhere to the traditional Rhode Island standard on motions to dismiss). In addition, the Fortuño decision was explicitly limited to the specific posture of a Super. R. Civ. P. 12(b)(6) motion. See Fortuño, 633 F.3d at 42 n.7 (“[The Court] only [addresses] which party bears this burden in the specific context and procedural posture presented in this appeal.”).

To conclude, the shifting of the burden of production to the state is consistent with the role of the Contract Clause in serving as a limitation on state power. As the United States Supreme Court explained in U.S. Trust, “[i]f a State could reduce its financial obligations whenever it wanted to spend the money for what it regarded as an important public purpose, the Contract Clause would provide no protection at all.” 431 U.S. at 26. “The requirement of a legitimate public purpose guarantees that the State is exercising its police power, rather than providing a benefit to special interests.” Energy Reserves Grp., 459 U.S. at 412. States will not be prevented “from exercising such [police] powers as are vested in it for the promotion of the common weal, or as necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected.” Liberty Mut. Ins. Co. v. Whitehouse, 868 F. Supp. 425, 432 (D.R.I. 1994) (quoting Keystone Bituminous Coal Ass’n v. DeBenedictis, 480 U.S. 470, 503 (1987)). The prohibition of the Contract Clause is read in conjunction with the presumption of constitutionality that cloaks every statute. Courts presume that “a Legislature understands and correctly appreciates the needs of its own people, that its laws are directed to

problems made manifest by experience[.]” Middleton v. Texas Power & Light Co., 249 U.S. 152, 157 (1919).

Consequently, the Contract Clause allows for the state to establish that the legislation is both reasonable and necessary for an important public purpose. See Southern California Gas Co., 336 F.3d at 894. In doing so, the state need not establish reasonableness and necessity beyond a reasonable doubt. Rather, the state must only show that it “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.’” Buffalo Teachers Fed’n v. Tobe, 464 F.3d 362, 371 (2nd Cir. 2006). If the state makes a sufficient showing of reasonableness and necessity, in order for the plaintiffs to prevail on their claim of unconstitutionality under the Contracts Clause, the plaintiffs must produce evidence to establish beyond a reasonable doubt that the legislation was not reasonable and necessary. Cf. Cayetano, 183 F.3d at 1107 (“[] Defendants have not established that [the challenged act] was both necessary and reasonable... [The court finds that] ‘Although perhaps politically more difficult, numerous other alternatives exist which would more effectively and equitably raise revenues.’”); Donohue v. Mangano, 886 F. Supp. 2d 126, 160 (E.D.N.Y. 2012) (“A lack of reasonableness or necessity is an element of a Contract Clause claim which the Plaintiffs bear the burden of establishing.”).

Finally, the Defendants assert that the burden of production may not be shifted to the State in these cases because the State is not a party to the contracts which the Plaintiffs are alleging have been impaired: the collective bargaining agreements (CBA) between the municipal

entities and their former or current employees.⁴ This argument is unavailing. The Court agrees with the Second Circuit that “the presence or absence of a state as a party to the contract is not determinative of the deference [due to the state].” Buffalo Teachers Fed’n, 464 F.3d at 370. Rather, the better rule is that the focus should be on “whether the contract-impairing law is self-serving, where existence of a state contract is some indicia of self-interest, but the absence of a state contract does not lead to the converse conclusion.” Id. In addition, this Court has previously found in the Pension I decision that an implied contract exists with respect to the Plaintiffs that arose out of their membership in the ERSRI. See Pension I, 2011 WL 4198506 at *18. Finally, the existence of a contract is a question of law more properly addressed at summary judgment and not in a motion in limine.

III

Conclusion

For the foregoing reasons, the Court grants the Plaintiffs’ Consolidated Motion in Limine as to the burden of proof on their Contract Clause claim and denies the State Defendants’ Motion in Limine as to the burden of proof for Contract Clause claims.

⁴ The municipal Defendants also argue that no portion of the burden may be shifted to the municipal entities because they were not the ones which actually impaired the contracts. The Court finds this argument to be unconvincing and notes, in any event, that the municipal Defendants have been added to the case as interested parties because of their CBAs with the Plaintiffs. See Bristol/Warren Reg’l Sch. Emps. v. Chafee, 2014 WL 3891229 (R.I. Super. Aug. 4, 2014).



RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: In re Pension Cases;

CASE NOS: PC 10-2859; PC 12-3166; PC 12-3167; PC 12-3168; PC 12-3169; PC 12-3579; KC 14-0345; PC 14-4343; PC 14-4768

COURT: Providence County Superior Court

DATE DECISION FILED: March 18, 2015

JUSTICE/MAGISTRATE: Taft-Carter, J.

ATTORNEYS:

For Plaintiff: See attached list.

For Defendant: See attached list.

In Re PENSION CASES

*C.A. Nos.: PC 12-3166; PC 12-3167; PC 12-3168; PC 12-3169; PC 12-3579; PC 10-2859;
KC 14-0345; PC 14-4343; PC 14-4768*

ATTORNEYS OF RECORD

Lynette Labinger
labinger@roney-labinger.com

Samuel D. Zurier
sdz@om-rilaw.com

Stephen M. Robinson
srobinson@smrobinsonlaw.com

Stephen Adams
sadams@bartongilman.com

Andrew D. Henneous
ahenneous@brasm.com

Matthew T. Oliverio
mto@om-rilaw.com

Jon Anderson
janderson@edwardswildman.com

Mackenzie Mango
mmango@edwardswildman.com

Marc DeSisto
marc@desistolaw.com

William J. Conley, Jr.
wconley@wjclaw.com

Raymond Marcaccio
ram@om-rilaw.com

Arthur G. Capaldi
acapaldi111@verizon.net

Matthew Jerzyk
matt@jerzyklaw.com

David R. Petrarca
david@rubroc.com

Peter D. Ruggiero
peter@rubroc.com

Andrew A. Thomas
athomas@silvalawgroup.com

David P. Martland
dmartland@silvalawgroup.com

Sara Rapport
srapport@whelankindersiket.com

Timothy C. Cavazza
tcavazza@whelankindersiket.com

Albert B. West
alwest@lawfirmdocs.com

Diana E. Pearson
Diana@dpearsonlaw.com

David D'Agostino
daviddagostino@gorhamlaw.com

Brian LaPlante
blaplante@lsglaw.com

Erica S. Pistorino
epistorino@lsglaw.com

William M. Dolan, III
wdolan@dbslawfirm.com

Nicholas Nybo
nnybo@dbslawfirm.com

William K. Wray, Jr.
wwray@dbslawfirm.com

Vincent F. Ragosta
v.ragosta@vfr-law.com

D. Peter DeSimone
dpdlaw@cox.net

Gerald J. Petros
gpetros@hinckleyallen.com

Andrew S. Tugan
atugan@hinckleyallen.com

Thomas R. Landry
tlandry@krakowsouris.com

Gregory P. Piccirilli
gregory@splawri.com

Gary Gentile, Esq.
ggentile@nage.org

Joseph F. Penza, Jr.
JFP@olenn-penza.com

Douglas L. Steele
dls@wmlaborlaw.com

Sara Conrath
sac@wmlaborlaw.com

Mark Gursky
mgursky@rilaborlaw.com

Elizabeth A. Wiens
ewiens@rilaborlaw.com

Michael B. Forte, Jr.
MBF@olenn-penza.com

Sean T. O'Leary
sto@oleary-law.net

Rebecca T. Partington
rpartington@riag.gov

Kelly A. McElroy
kmcelroy@riag.ri.gov

Carly Beauvais Iafrate
ciafrate@verizon.net

Jonathan F. Whaley
jfw@oleary-law.net

Jay E. Sushelsky
jsushelsky@aarp.org
John A. Tarantino
jtarantino@apslaw.com

Patricia K. Rocha
procha@apslaw.com

Joseph Avanzato
javanzato@apslaw.com

Nicole J. Benjamin
nbenjamin@apslaw.com

Rebecca T. Partington
rpartington@riag.ri.gov

Kelly A. McElroy
kmcelroy@riag.ri.gov