STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: July 17, 2014)

RHODE ISLAND PUBLIC EMPLOYEES' RETIREE COALITION, AFSCME, COUNCIL 94 RETIREE CHAPTER, NEARI-RETIRED, RI AFT/R LOCAL 8037, RHODE ISLAND RETIRED TEACHERS ASSOCIATION, RHODE ISLAND ASSOCIATION OF RETIRED PRINCIPALS, RHODE ISLAND LABORERS' RETIREE COUNCIL, DAVID FLORIO, JAMES GILLIS, CAROL KEISER, MARK KURTZMAN, MARY ANN PARKER, ANTHONY PICCIRILLI	:	
VS.	:	**C.A. NO. PC 12-3166**
LINCOLN D. CHAFEE, in his capacity as Governor of the State of Rhode Island, GINA RAIMONDO, in her capacity as General Treasurer of the State of Rhode Island, and the EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND, by and through the RETIREMENT BOARD, by and through Gina Raimondo, in her capacity of Chairperson of the Retirement Board, and Frank J. Karpinski, in his capacity as Secretary of the Retirement Board	:	

JOSEPH CLIFFORD, EDWARD BALFOUR, WILLIAM BERUBE, WILLIAM BLAIR, ANNMARIE BOLVIN, DENISE BOULE, MARIANN CALLAHAN, JOSEPH CAPALBO, JANE CARLSON-PICKERING, CATHERINE CELEBERTO, MICHAEL CLIFFORD, KATHLEEN CRESCENZO, MONIKA CURNETT, SANDRA CURRAN, PAMELA DELVECCHIO, MARILYN DISTEFANO, BINYAMIN EFREOM, JOANNE FONSECA, MARY GARDINER, PATRICIA GIAMMARCO, KATHLEEN GIRARD,	:	

MARGUERITE GIROUX, MARY HOWARD, PATRICIA KELLEY, NANCY LEMME, ELIZABETH MARCELLO, GREGORY MARCELLO, KATHLEEN MARSHALL, JOANNE MATISEWSKI, CAROL MAYHEW, LUCILLE MOTA-COSTA, FRANCIS MULLINS, TIMOTHY MURPHY, JOHN O'BRIEN, PIERRETTE O'BRIEN, WILLIAM O'CONNOR, BARBARA OBERLE, JOHN OBERLE, LEO JUDE PAQUETTE, SANDRA PAQUETTE, SUSAN REMINGTON, ANTHONY RICCI, JANE ROCHE, TERESA ROMANO, CYNTHIA RONDEAU, MICHAEL SENERCHIA, SUSAN SWEET, CHERYL VINCENT, C JUDITH WALLACE and KATHLEEN WINTER	:	
VS.	:	**C.A. NO. KC 14-0345**
LINCOLN CHAFEE, in his capacity as Governor of the State of Rhode Island, GINA RAIMONDO, in her capacity as General Treasurer of the State of Rhode Island, and the EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND, by and through the RHODE ISLAND RETIREMENT BOARD, by and through GINA RAIMONDO, in her capacity as Chairperson of the Retirement Board, and FRANK KARPINSKI, in his capacity as Executive Director and Secretary of the Retirement Board	:	

DECISION

TAFT-CARTER, J. Before this Court is Defendants' Motion to Join Retirees as Indispensable Parties and/or Parties Whose Rights May Be Affected by the Declarations Sought. Plaintiffs are associations of retired state and municipal employees and public school teachers, and individual retired state employees and public school teachers. This Motion raises common issues of fact and law. For the purposes of judicial economy, this Court issues one Decision applying to each

of the two separate actions. Jurisdiction is pursuant to Super. R. Civ. P. 19 (Rule 19) and G.L. 1956 § 9-30-11.

I

Facts and Travel

These actions concern constitutional challenges to the enactment of the Rhode Island Retirement Security Act of 2011 (RIRSA). The Employees' Retirement System of Rhode Island (ERSRI), established in 1936, is a retirement system for state employees, school teachers, and employees of cities and towns that choose to participate. See G.L. 1956 §§ 36-8-1, et seq. The purpose of the retirement system is to provide retirement allowances to employees of the State of Rhode Island. ERSRI is administered by the Retirement Board (Board), which oversees the Employees' Retirement System (ERS) and the Municipal Employees' Retirement System (MERS). Sec. 36-10-1; G.L. 1956 §§ 45-21-1, et seq. ERSRI provides a mandatory, contributory defined benefit plan under which participants contribute a statutorily set percentage of their annual salary in exchange for a fixed retirement allowance. The retirement allowance becomes payable to participants in equal monthly installments after retirement. In addition to the retirement allowance, participants' pension benefits are compounded by a Cost of Living Adjustment (COLA). The intent of the COLA is to maintain the real value of a retiree's pension in light of changes to the cost of living occurring over the life of retirement.

As a consequence of the underfunding of Rhode Island's public pension system, the General Assembly enacted RIRSA in November 2011. RIRSA altered the standards for retirement for employees in the retirement system, changing the structure of the program from a traditional defined benefit plan to a "hybrid plan" with smaller defined benefits and a supplemental defined contribution plan. RIRSA also permanently reduced all COLAs to apply

only to the first $25,000 of a person's retirement allowance and suspended all COLAs until they are funded to eighty percent, which is estimated to take at least sixteen years.

On June 22, 2012, Plaintiffs in C.A. No. PC-12-3166 filed suit on behalf of individual retired state and municipal employees and retired public school teachers who were current beneficiaries of the ERSRI at the time the RIRSA became effective. Plaintiffs allege violations of the Contracts Clause, Takings Clause, and Due Process Clause of the Rhode Island Constitution and ask this Court to declare RIRSA unconstitutional. Plaintiffs also seek equitable relief, including a temporary restraining order, preliminary injunction, and permanent injunction "prohibiting the State . . . from relying upon or applying the provisions of [RIRSA]" to the Plaintiffs and "to restore and make whole all retirement benefits diminished by application thereof." On April 3, 2014, fifty retired state employees filed a separate lawsuit, Clifford v. Chafee, KC-14-0345 (the Clifford case), seeking similar relief and demanding a jury trial with respect to all aspects of their causes of action.

On May 29, 2014, Defendants filed the instant Motion pursuant to § 9-30-11 and Rule 19. The caption of that Motion only indicated case number PC-12-3166. On July 1, 2014, Defendants made an oral motion to add Plaintiffs in the Clifford case to Defendants' original Motion. The Motion was granted. The Court heard oral arguments and now issues its Decision.

II

Standard of Review

A

Rule 19

Joinder of parties is governed by Rule 19, which "advocates joining a party if in his or her absence complete relief cannot be accorded to those already made parties or if disposition of

the matter would impair or impede the party's ability to protect his or her interest in the subject matter of the suit." Abbatematteo v. State, 694 A.2d 738, 740 (R.I. 1997). Rule 19(a), "Persons to be Joined if Feasible," provides:

> "A person who is subject to service of process shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the person's claimed interest."

"Rule 19 [thus] recognizes the difference between persons whose joinder in an action is absolutely essential if the action is to proceed at all and those who ought to be joined but in whose absence the action can, nevertheless, continue." Doreck v. Roderiques, 120 R.I. 175, 179, 385 A.2d 1062, 1064 (1978). "The first class of such persons is referred to as 'indispensable' and the latter group as 'necessary.'" Id. An action may not proceed in the absence of an indispensable party. See Robert B. Kent et al., Rhode Island Civil and Appellate Procedure § 19:2 (2006). Moreover, "[t]he burden is on the party raising the defense to show that the person who was not joined is needed for a just adjudication." 7 C. Wright et al., Federal Practice and Procedure § 1609 at 142 (3d ed. 2001).

B

UDJA

The Uniform Declaratory Judgment Act (UDJA) vests this Court with the "power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." Sec. 9-30-1. Section 9-30-11 of the UDJA provides in pertinent part that "all persons shall be made parties who have or claim any interest which would be affected by the declaration,

and no declaration shall prejudice the rights of persons not parties to the proceeding."[1] "This requirement furthers the purpose of the [UDJA] . . . which is 'to facilitate the termination of controversies.'" Burns, 86 A.3d at 358 (quoting Abbatematteo, 694 A.2d at 740).

"[W]hen a [declaratory] judgment is not binding on all persons who have a direct interest in the dispute, the Superior Court should not assert jurisdiction." Abbatematteo, 694 A.2d at 740. The Rhode Island Supreme Court has "held that the above-cited provision in § 9-30-11 is mandatory." Burns, 86 A.3d at 358 (citing Thompson v. Town Council of Westerly, 487 A.2d 498, 499 (R.I. 1985)); see also In re City of Warwick, 97 R.I. 294, 296, 197 A.2d 287, 288 (1964). Thus, "failure to join all persons who have an interest that would be affected by the declaration is fatal." Burns, 86 A.3d at 358 (citation omitted).

When deciding whether a party should be joined in a case under § 9-30-11, our Supreme Court has consistently looked to the purpose of the UDJA—"to facilitate the termination of controversies"—for guidance. See id. at 358. Thus, this Court must consider whether the binding effect of the declaration sought would truly "facilitate the termination of the controversy." See § 9-30-11; In re City of Warwick, 97 R.I. at 296, 197 A.2d at 288; Thompson, 487 A.2d at 500; Sullivan v. Chafee, 703 A.2d 748, 750 (R.I. 1997); Abbatematteo, 694 A.2d at 740; City of Newport v. Local 1080, 54 A.3d 976, 979 (R.I. 2012); Burns, 86 A.3d at 359. Our

[1] Although our Supreme Court has referred to parties required to be joined under Rule 19 and § 9-30-11 interchangeably as "indispensable parties," this Court notes that the wording in each statute differs slightly. In Rule 19, "indispensable parties" are defined by determining whether, "in the person's absence[,] complete relief cannot be accorded among those already parties." See Ret. Bd. of Employees' Ret. Sys. of State v. DiPrete, 845 A.2d 270, 285 (R.I. 2004) (labeling such parties as indispensable). However, the Rhode Island Supreme Court has also given the "indispensable" label to required parties under § 9-30-11 who are defined as anyone "who [has] or claim[s] any interest which would be affected by the declaration." See Burns v. Moorland Farm Condo. Ass'n, 86 A.3d 354, 357-60 (R.I. 2014). Our Supreme Court applied both standards to a declaratory judgment action in Abbatematteo, implicitly indicating that the standards for indispensability were generally the same. Abbatematteo, 694 A.2d at 740.

Supreme Court has also acknowledged that other jurisdictions have recognized "a compromise which a court may in its judicial discretion adopt as between the desire for conclusiveness as to all interested parties and convenience in joining them," which the Court assumed, without deciding, that it would adopt in "appropriate circumstances." See In re Warwick, 97 R.I. at 297, 197 A.2d at 289; Thompson, 487 A.2d at 500.

III

Analysis

Defendants maintain that all retirees who are members of ERSRI and who are not already Plaintiffs or members of the Plaintiff Retiree Association (Non-Party Retirees) must be joined as indispensable parties pursuant to Rule 19 and/or § 9-30-11. Defs.' Mem. in Supp. of Joinder of Retirees at 5. In support of their Motion, Defendants contend that the Non-Party Retirees' retirement benefits may be affected by the disposition of this Court, and thus they are indispensable parties without whom this Court lacks subject matter jurisdiction in this case. At the July 1, 2014 hearing, Defendants acknowledged that joinder may be too cumbersome given the number of potentially impacted retirees and alternatively asked this Court to impose a class certification upon all retirees or issue an order that res judicata and/or collateral estoppel prevents retirees from litigating the issues in these cases in future cases.

Plaintiffs, all retired persons as of the effective date of RIRSA, oppose Defendants' Motion on the ground that Defendants have not met their burden as the moving party to specifically identify indispensable parties and provide sufficient proof of their indispensability. In addition, Plaintiffs contend that joinder would be unduly burdensome because of the large number of potential new parties and would undermine the Plaintiffs' access to the UDJA.

A

Rule 19

Under Rule 19, the participation of all indispensable parties is essential, and no action may proceed without all such parties. See DiPrete, 845 A.2d at 270; Kent et al., supra. This Court adopts a "pragmatic approach" to determine a party's indispensability. Doreck, 120 R.I. at 179, 385 A.2d at 1064. Rather than a "fixed formula" for determining whether a party is indispensable, the Court looks to the individual facts in each case and the effect of the requested judgment on the absent parties. See id. at 179-80, 385 A.2d at 1064-65. To guide courts with respect to the issue of indispensability, our Supreme Court has stated:

> "'[T]rue indispensable parties are only those whose interests could not be excluded from the terms or consequences of the judgment and leave anything, or appreciably anything, for the judgment effectively to operate upon, as whether the interests of the absent party are inextricably tied in to the cause * * * or where the relief really is sought against the absent party alone.'" DiPrete, 845 A.2d at 285 (quoting Doreck, 120 R.I. at 180, 385 A.2d at 1065).

"In other words, if there may be a viable judgment having separable affirmative consequences with respect to the parties before the court, and the inquiry is concerned solely with the inequities, in the light of the total circumstances, resulting from the inability to affect absent interested parties," then those "other parties" are simply necessary, and not indispensable. Doreck, 120 R.I. at 180, 385 A.2d at 1065.

"A court does not know whether a particular person is 'indispensable' until it has examined the situation to determine whether it can proceed without him." Id. at 180, 385 A.2d at 1064-65. "The most important factor in determining whether a party is indispensable is 'whether a judgment entered in the case may have separable affirmative consequences with respect to parties before the court.'" DiPrete, 845 A.2d at 285 (quoting Doreck, 120 R.I. at 180, 385 A.2d

at 1065). A court must therefore look to whether complete relief can be afforded without joining the parties and whether any of the current litigants will face multiple or inconsistent results for claims that should be resolved together. Desjarlais v. USAA Ins. Co., 824 A.2d 1272, 1274 (R.I. 2003).

Here, the procedural posture of this case is unique in that the relief sought is a declaration that a statute is constitutional or unconstitutional. Ultimately, constitutional challenges resulting in a declaration can be said to affect every citizen of the State of Rhode Island. See Norton v. Shelby County, 118 U.S. 425, 442, 6 S. Ct. 1121, 1125 (1886) ("An unconstitutional act is not a law; it confers no rights; it imposes no duties . . . it is, in legal contemplation, as inoperative as though it had never been passed."); Yekhtikian v. Blessing, 90 R.I. 287, 290, 157 A.2d 669, 670 (1960) (noting that "an unconstitutional act is a nullity," and usually considered void from its inception). In this regard, the relief sought can be fully afforded without the Non-Party Retirees' joinder because the "terms or consequences" of the judgment sought will affect the Non-Party Retirees regardless of their participation in this suit. See DiPrete, 845 A.2d at 285.

Moreover, while it is certainly true that this declaration may affect the Non-Party Retirees more so than a citizen, these retirees would not suffer "separable affirmative consequences with respect to parties before the court." Id. (applying Rule 19). Rather, the impact on each Non-Party Retiree would be identical to that of any current Plaintiff, and thus, all such persons' interests are adequately represented before this Court by other retirees. Id. (holding that a party is truly indispensable only where his or her interests are unable to be protected). Therefore, the Non-Party Retirees are not indispensable parties under Rule 19.

B

UDJA

A stricter standard of review in determining whether a party is indispensable is applied under § 9-30-11 of the UDJA. Compare Anderson v. Anderson, 109 R.I. 204, 211, 283 A.2d 265, 269 (1971) (noting that even a finding of indispensability under Rule 19 "does not deprive the court of its power to act with respect to those before it," but requires the Court to consider new "constitutional overtones" of due process considerations) (quotation omitted) with Rosano v. Mortg. Elec. Registration Sys., Inc., 91 A.3d 336, 339 (R.I. 2014) (construing § 9-30-11 as "mandatory," and holding that failure to join necessary parties under the statute is "fatal" to a claim) (quotation omitted). "Section 9-30-11 provides that '[w]hen declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.'" Thompson, 487 A.2d at 499 (citing § 9-30-11). Our Supreme Court "has held that this provision is mandatory and that failure to join all persons who have an interest that would be affected by the declaration ordinarily is fatal to an action." Id. For example, in Burns, the Rhode Island Supreme Court found that members of a condominium association who would be liable for additional payments in the event that the plaintiffs in that case obtained a successful declaration were "indispensable" parties. Burns, 86 A.3d at 357-60. Moreover, in In re City of Warwick, the Court determined that a declaration of whether Warwick's municipal charter governed the elections to three local boards directly affected absent board members who each had "an actual and essential interest." In re City of Warwick, 97 R.I. at 296, 197 A.2d at 288.

The strict joinder requirement echoes the UDJA's purpose of facilitating the termination of controversies. As such, a court may "not generally assert jurisdiction in situations in which

the judgment would not be binding on all persons who have an interest in the dispute." Thompson, 487 A.2d at 499. To do otherwise would contravene the intent of the UDJA. The question posed is whether the rule that anyone whose interests may be affected by the litigation must be joined as a party is without limitation.

While it is true that the Superior Court would lack subject matter jurisdiction in the case of a failure to join indispensable parties, as applied to the facts of this case, the analysis requires a further examination of the limitations, if any, to that mandate. This Court is mindful that the precedent requires that a party must be joined if a party's claim is so conjoined that a decree cannot enter without crippling his or her rights. Whether the application of § 9-30-11 is subject to limiting principles in the context of constitutional challenges is a question of first impression in this jurisdiction.[2]

Other jurisdictions' approaches to this particular issue provide non-binding guidance to this Court. In City of Philadelphia v. Commonwealth, 838 A.2d 566 (Pa. 2003), the Supreme Court of Pennsylvania considered the question of indispensability in the context of a challenge to the validity of a statute, applying a substantially identical provision to § 9-30-11. Defendants

[2] Defendants contend that the Rhode Island Supreme Court has ruled on the precise question presented by this motion. This Court disagrees. In Abbatematteo, 694 A.2d 738, participants in ERSRI filed an action seeking declaratory and injunctive relief against the alleged unconstitutional implementation and operation of the retirement system. Plaintiffs argued that defendants, the State of Rhode Island and the ERSRI, paid certain participants "retirement benefits 'significantly more generous, in relation to the actuarial value of their contributions,' than the benefits that plaintiffs and other members of the retirement system receive or expect to receive." Id. at 739. The Court found that Plaintiffs' complaint was "fatally flawed for noncompliance with" § 9-30-11 because they did not join those retirees receiving the allegedly more generous benefits. Id. at 740. The Court noted that because "[d]isposition of the action in plaintiffs' favor . . . would reduce or eliminate pension benefits for these 'favored' members of the retirement system[,] . . . these members were indispensable parties that should have been joined to the action." Id. In the instant case, the Plaintiffs have challenged amendments to pension laws in Rhode Island that affect all retirees equally and do not allege disparate treatment among easily identifiable pension recipients. Any resolution of the instant case will have the same uniform effect on Plaintiffs and Non-Party Retirees.

contended that "anyone whose interests may be affected by any aspect of the challenged legislation must be formally joined for jurisdiction to lie." Id. at 566-67. The Court acknowledged that the "joinder provision is mandatory," yet noted "it is subject to limiting principles." Id. at 582. In particular, the Court construed the UDJA as

> "subject to reasonable limitations: if that provision were applied in an overly literal manner in the context of constitutional challenges to legislative enactments containing a wide range of topics that potentially affect many classes of citizens, institutions, organizations, and corporations, such lawsuits could sweep in hundreds of parties and render the litigation unmanageable. It is true that all such parties would be affected, at least incidentally, by a declaration that the statute in question is unconstitutional. . . . However, requiring the joinder of all such parties would undermine the litigation process." Id. at 582-83.

The court concluded that "requiring the participation of all parties having any interests which could potentially be affected by the invalidation of a statute would be impractical." Id. at 583. Further, "such an interpretation would result in an unwieldy judicial resolution process [and thus] . . . run contrary to the Legislature's direction . . . to settle, and afford relief from, uncertainty relative to rights, status, and other legal relations." Id. at 583. In conclusion, the Court found that

> "while it is true that the Act purports to alter the rights and obligations of numerous persons, due to the nature of the constitutional issues raised in the Complaint, achieving justice is not dependent upon the participation of all of those persons."

The Wisconsin Supreme Court has also imposed "reasonable limitations" on joinder in constitutional challenges to statutes. In Town of Blooming Grove v. City of Madison, 275 Wis. 328, 81 N.W.2d 713 (1957), the Court noted that it did not literally interpret its joinder statute—also identical to § 9-30-11—as "requiring that where a declaratory judgment as to the validity of a statute or ordinance is sought, every person whose interests are affected by the statute or

ordinance must be made a party to the action." Id. at 334, 81 N.W.2d at 717. "If it were so construed, the valuable remedy of declaratory judgment would be rendered impractical and indeed often worthless for determining the validity of legislative enactments, either state or local, since such enactments commonly affect the interests of large numbers of people." Id. The Court held that the UDJA "should not be nullified by an inconsistent and unduly literal interpretation of" the joinder of parties. Id.

Moreover, in White House Milk Co. v. Thomson, 275 Wis. 243, 81 N.W.2d 725 (1957), the Wisconsin Supreme Court further noted that the UDJA did not require joinder "of any persons other than the public officers charged with the enforcement of the challenged statute or ordinance." Id. at 249, 81 N.W.2d at 729. "Such defendant public officers act in a representative capacity in behalf of all persons having an interest in upholding the validity of the statute or ordinance under attack." Id.

The present case warrants the application of reasonable limits upon the application of joinder provisions of § 9-30-11. Although not calculated for this Court by Defendants, the estimated number of Non-Party Retirees is within the "many thousands." Pls.' Consol. Mem. at 9. The identification of and service upon such a large number of individual persons constitute a "circumstance[] where it is impractical to require the joinder of all members of the class," because "the members of the class whose rights are to be affected are so numerous or service upon them would entail such difficulties as would impose an unreasonable burden." In re City of Warwick, 97 R.I. at 297, 197 A.2d at 289; Thompson, 487 A.2d at 500.

Just as other jurisdictions have noted in similar challenges to the constitutionality of statutes, this "overly literal" application of § 9-30-11 would "render the litigation unmanageable." See City of Philadelphia, 838 A.2d at 568-69; Town of Blooming Grove, 275

Wis. at 334, 81 N.W.2d at 717. Although all Non-Party Retirees will "be affected, at least incidentally, by a declaration that the statute in question is unconstitutional," joinder of each individual would be "impractical." City of Philadelphia, 838 A.2d at 568-69. Application of this inflexible standard to all constitutional challenges would contravene the intent of the UDJA and render it "worthless for determining the validity of legislative enactments." Town of Blooming Grove, 275 Wis. at 334, 81 N.W.2d at 717; see also Generation Realty, LLC v. Catanzaro, 21 A.3d 253, 259 (R.I. 2011) (noting that "under no circumstances will this Court construe a statute to reach an absurd result") (quotation omitted). Moreover, the interests of the Non-Party Retirees are the same as those of the Plaintiffs, because RIRSA has a uniform effect on all such retirees, and thus, those interests are represented before this Court. See City of Philadelphia, 838 A.2d 582-83.

Joinder of Non-Party Retirees in this constitutional challenge would impose an unreasonable burden on the parties, nullifying the purpose of the UDJA "to facilitate the termination of controversies." See Burns, 86 A.3d at 358; Abbatematteo, 694 A.2d at 740. To construe § 9-30-11 of the UDJA in this way would "reach an absurd result" of hindering the purpose of the statute as a whole. Generation Realty, LLC, 21 A.3d at 259. It is axiomatic that a party does not have to be joined to a case to be bound by a declaration of a statute's unconstitutionality. See Norton, 118 U.S. at 442, 6 S. Ct. at 1125 ("An unconstitutional act is not a law; it confers no rights; it imposes no duties . . . it is, in legal contemplation, as inoperative as though it had never been passed."); Yekhtikian, 90 R.I. at 290, 157 A.2d at 670 (noting that "an unconstitutional act is a nullity," and usually considered void from its inception). A declaration by this Court that RIRSA is unconstitutional renders the statute "inoperative" for parties and non-parties alike. Norton, 118 U.S. at 442, 6 S. Ct. at 1125. Construction of § 9-30-

11 in light of the UDJA's goal of facilitating the termination of controversies leads this Court to conclude that the Non-Party Retirees are not indispensable parties to the determination of the constitutionality of RIRSA.

C

Class Certification and/or Res Judicata Declaration

In the alternative, Defendants have suggested that this Court impose a class certification upon all retirees or make a preliminary determination that all retirees' rights are adequately represented in this case, thus imposing res judicata or collateral estoppel on any future challenges to RIRSA. Defendants provide no basis, legal or otherwise, for these contentions. See Manchester v. Pereira, 926 A.2d 1005, 1015 n.8 (R.I. 2007) (declining to consider arguments presented by plaintiffs that were unsupported by "any meaningful argument . . . [i]n light of our well established rule that we will not substantively address an issue that was not adequately briefed").

This Court notes that although "[i]n rare cases, the defendant may move for certification of a plaintiff class," 3 William B. Rubenstein, Newburg on Class Actions §7:1 (5th ed. 2013), the party moving under Super. R. Civ. P. 23 still bears the burden of demonstrating to this Court that a class action is appropriate. See Cohen v. Harrington, 722 A.2d 1191, 1196 (R.I. 1999). Defendants have not presented this Court with any arguments regarding the required showings a moving party must make to attain class certification. See id.; Super. R. Civ. P. 23.

Moreover, this Court cannot dictate the preclusive consequences of any judgments arising out of this case in any future cases. See Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 805, 105 S. Ct. 2965, 2971 (1985) ("[A] court adjudicating a dispute may not be able to predetermine the res judicata effect of its own judgment."); 18 C. Wright, et al., Federal Practice and Procedure

§ 4405 at 82 (2d ed. 2002). "A court conducting an action cannot predetermine the res judicata effect of the judgment; that effect can be tested only in a subsequent action." Matsushita Elec. Indus. Co. v. Epstein, 516 U.S. 367, 396, 116 S. Ct. 873, 888 (1996). While this Court acknowledges there is ample case law to support the contention that potential future litigants will be bound by a declaration that RIRSA is unconstitutional, supra § III.C, it is not this Court's role to make such a declaration. See Phillips Petroleum Co., 472 U.S. at 805, 105 S. Ct. at 2971. Moreover, a declaration that RIRSA is unconstitutional is only one potential outcome of this case, and such a determination would not, under any outcome, affect the determination of damages for any present or future litigant. Thus, this Court must deny Defendants' requests made at the July 1, 2014 hearing that it impose a class certification upon all retirees or that it make a declaration of res judicata upon all potential future cases.

IV

Conclusion

For the foregoing reasons, Defendants' Motion to Join Retirees as Indispensable Parties and/or Parties Whose Rights May Be Affected by the Declarations Sought is DENIED. Counsel shall submit the appropriate judgment for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Rhode Island Public Employees' Retiree Coalition, et al. v. Lincoln D. Chafee, et al.** **and** **Joseph Clifford, et al. v. Lincoln D. Chafee, et al.**
CASE NO:	**PC 12-3166** **KC 14-0345**
COURT:	**Providence County Superior Court** **Kent County Superior Court**
DATE DECISION FILED:	**July 17, 2014**
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

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