
Public Hearing

before

ASSEMBLY JUDICIARY COMMITTEE

Assembly Concurrent Resolution 3 (1R)

“Proposes constitutional amendment to require payments by State to State-administered retirement systems and establish in Constitution right of public employees to pension benefit; provides for enforcement of funding obligations and benefit rights”

LOCATION: Committee Room 12
State House Annex
Trenton, New Jersey

DATE: January 7, 2016
11:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Assemblyman John F. McKeon, Chair
Assemblyman Gordon M. Johnson, Vice Chair
Assemblyman Ralph R. Caputo
Assemblyman Joseph A. Lagana
Assemblyman Chris A. Brown
Assemblywoman Holly Schepisi



ALSO PRESENT:

Miriam Bavati
Rafaela Garcia
Office of Legislative Services
Committee Aides

Keith White
Assembly Majority
Committee Aide

John Kingston
Assembly Republican
Committee Aide

Hearing Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey



JOHN F. McKEON
Chair

GORDON M. JOHNSON
Vice-Chair

JOSEPH A. LAGANA
BENJIE E. WIMBERLY
MICHAEL PATRICK CARROLL
HOLLY SCHEPISI

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New Jersey State Legislature
ASSEMBLY JUDICIARY COMMITTEE
STATE HOUSE ANNEX
PO BOX 068
TRENTON NJ 08625-0068

PUBLIC HEARING NOTICE

The Assembly Judiciary Committee will hold a public hearing on Thursday, January 7, 2016 at 11:00 AM in Committee Room 12, 4th Floor, State House Annex, Trenton, New Jersey.

The public may address comments and questions to Rafaela Garcia, Miriam Bavati, Committee Aides, or make bill status and scheduling inquiries to Denise Darmody, Secretary, at (609)847-3865, fax (609)292-6510, or e-mail: OLSAideAJU@njleg.org. Written and electronic comments, questions and testimony submitted to the committee by the public, as well as recordings and transcripts, if any, of oral testimony, are government records and will be available to the public upon request.

The public hearing is being held in compliance with Article IX, paragraph 1 of the New Jersey Constitution and Rule 19:3 of the General Assembly on the following Assembly Concurrent Resolutions:

- | | |
|--|---|
| ACR-1
Prieto/Wisniewski/
Singleton/Lagana | Amends State Constitution to dedicate all State revenues from motor fuels and petroleum products gross receipts tax to transportation system. |
| ACR-2 (2R)
Caputo/Prieto/Schaer/
Vainieri Huttler/Mukherji/
Lagana/Eustace/Caride/
Jimenez/Johnson/
McKeon//Giblin/Oliver/
Spencer/Jasey/Tucker/
Pintor Marin | Proposes constitutional amendment to allow Legislature to authorize by law establishment and operation of casinos in certain counties. |
| ACR-3 (1R)
Prieto | Proposes constitutional amendment to require payments by State to State-administered retirement systems and establish in Constitution right of public employees to pension benefit; provides for enforcement of funding obligations and benefit rights. |
| ACR-4 (1R)
Greenwald/McKeon/
Singleton | Proposes constitutional amendment to change membership of legislative Apportionment Commission; imposes certain requirements on commission for process and legislative district composition. |

Issued 12/24/15

For reasonable accommodation of a disability call the telephone number or fax number above, or TTY for persons with hearing loss 609-777-2744 (toll free in NJ) 800-257-7490. The provision of assistive listening devices requires 24 hours' notice. Real time reporter or sign language interpretation requires 5 days' notice.

For changes in schedule due to snow or other emergencies, call 800-792-8630 (toll-free in NJ) or 609-292-4840.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY CONCURRENT RESOLUTION No. 3

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 17, 2015

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Concurrent Resolution No. 3.

The purpose of this amendment to the State Constitution is to require the State to fund the pensions of public employees on a timely basis. Current law requires the State to do this under the provisions set forth in subsection c. of N.J.S.A.43:3C-9.5, as enacted by section 26 of P.L.2011, c.78, commonly referred to as Chapter 78. However, currently these provisions cannot be enforced by the courts of this State.

Chapter 78 requires the State and local government employers to make annual contributions to the various pension systems administered by the State: Teachers' Pension and Annuity Fund; Judicial Retirement System; Prison Officers' Pension Fund; Public Employees' Retirement System; Consolidated Police and Firemen's Pension Fund; Police and Firemen's Retirement System; and State Police Retirement System. The pension funding provisions of Chapter 78 were part of a historic bipartisan compromise, endorsed by the Governor, to ensure the solvency of the public employee pension systems. Chapter 78 increased pension contributions by public employees and suspended the payment of cost of living adjustments (COLA) to retirees until certain funding threshold levels are achieved. Chapter 78 also established a constitutionally protected contractual right to the payment of the annual required contributions to the pension systems by the State and all other public employers.

This amendment to the Constitution is necessary to reverse a 2015 decision of the New Jersey Supreme Court, *Burgos v. State*, 222 N.J. 175, which held the contractual obligation of the State to make its annual required contributions to the pension systems unenforceable because it was "subject to appropriation" and contravened the Debt Limitation Clause of the Constitution unless approved by the voters. This amendment overrules that holding and ensures that the commitment and requirement for annual funding to eventually reach full funding for the pension systems are protected by the New Jersey Constitution.

In *Burgos*, the Supreme Court relied on certain provisions of the New Jersey Constitution, including the Debt Limitation and Appropriations Clauses, to declare unenforceable the contractual promise made in statute to public employees that the State will make its annual required contributions to the pension systems. Therefore, this amendment provides that its provisions will be given effect notwithstanding any other provision of the Constitution.

As a result of the State's failure to fund the pension systems at levels determined to be necessary by the actuaries of the pension systems, the pension systems are approaching insolvency.

Notwithstanding the enactment of Chapter 78, in each of the last three State fiscal years, the Governor has made contributions to the pension systems that were less than that required of the State by law. The purpose of this amendment to the Constitution is to ensure full funding of the pension systems under generally accepted actuarial principles.

To ease the financial burden on the State, the amendment requires the State to make its full pension contribution payment commencing July 1, 2021, and in each fiscal year thereafter, but requires partial increasing contributions over a period of four years, starting in State fiscal year 2017 when only 60 percent of the payment is required.

The committee amendments require that, commencing July 1, 2017 the State shall make a payment to each retirement system and pension fund of at least 4/8ths of the full annual required contribution for each system and fund for that State fiscal year. The amendments also require a payment that increases by at least an additional 1/8th of the full annual required contribution for each system and fund for each subsequent fiscal year until payment of the full contribution is required to be made commencing July 1, 2021. The resolution as originally introduced would have required the State payment commencing July 1, 2017 to be at least 6/10ths of the full amount and would have required a payment that increased by at least an additional 1/10th of the full annual required contribution for each subsequent fiscal year.

Quarterly payments are required to accelerate the return on investment of the pension systems. Under current law, State instrumentalities and local governments will continue to be obligated to make full payments.

This amendment requires the pension payment to be included in the annual State budget law. However, the appropriation obligation would be subject to and subordinate to appropriations for State general obligation bonds heretofore authorized in accordance with Article VIII, Section II, paragraph 3 of the Constitution.

This amendment to the Constitution also incorporates in the Constitution subsections a. and b. of N.J.S.A.43:3C-9.5 to protect the contractual right of vested members of pension systems hired prior to May 21, 2010, the effective date of P.L. 2010, c. 1, to the

pension benefits in effect upon the attainment by a public employee of five years of service credit in a pension system. This means that the pension benefit program for any employee for whom the right has attached, inclusive of all pension service earned during their employment, cannot be reduced. The amendment also establishes the rights of all other employees, meaning that they will have vested contractual rights to earned pension benefits after ten years of service credit, and to the benefit earned each year thereafter; however, the benefit formula can be reduced prospectively. These provisions of the amendment are necessary because the Supreme Court in the *Burgos* case left unresolved the issue as to whether laws that create non-forfeitable and vested rights to pension benefits are enforceable. The amendment does not alter current law that authorizes pension service credit or benefits to be reduced or forfeited for an employee's crime or misconduct.

This amendment does not impose any obligations on the State concerning post-retirement health care benefits, which will continue to be addressed through lawmaking and the State budget process.

The substantive constitutional rights and obligations established by this amendment are enforceable by the courts of this State, which can issue declaratory, injunctive, or other orders appropriate to secure compliance with these rights and obligations. This too is a necessary part of the amendment because in the *Burgos* decision, the Court expressed concern that under the separation of powers doctrine it would be inappropriate for the courts to enmesh themselves in the enforcement of contractual rights to pension contributions and benefits. By providing for enforcement through the courts, the amendment allows State courts to issue necessary remedial orders to ensure compliance with the State's pension payment obligations.

COMMITTEE AMENDMENTS

The committee amendments to new Section IV change the payment schedule from 6/10ths to 4/8ths of the full annual required contribution for each system and fund. The amendments would also change from 1/10th to 1/8th the amount by which the payment increases each year.

MINORITY STATEMENT

By Assemblywoman Holly Schepisi

This proposed constitutional amendment was made available to us for the first time only two days before committee consideration, including an amendment provided to the committee only the evening before. In the hasty and virtually non-deliberative process utilized to advance this proposal no consideration has been given to

the negative impacts this proposal may have on the State's finances, including the impact on the State's credit rating. While increased contributions could help the State's credit rating to rise initially, the borrowing necessary to make these payments during the year will increase the State's need for liquidity support in excess of 10% of revenues, a scenario Moody's has indicated will cause the State's credit rating to decrease. Additionally, this amendment may place New Jersey taxpayers in the perilous position of being subject to inordinate tax increases in times of economic stagnation. Questions such as these must be answered before advancing a proposed constitutional amendment with a significant but unknown impact on the finances of New Jersey. Proposals such as this deserve more than two days' review and a rushed committee discussion with little time to ask even the most basic questions.

We therefore cannot in good conscience support this proposal to amend the State Constitution.

[First Reprint]

**ASSEMBLY CONCURRENT
RESOLUTION No. 3**

STATE OF NEW JERSEY

216th LEGISLATURE

INTRODUCED DECEMBER 14, 2015

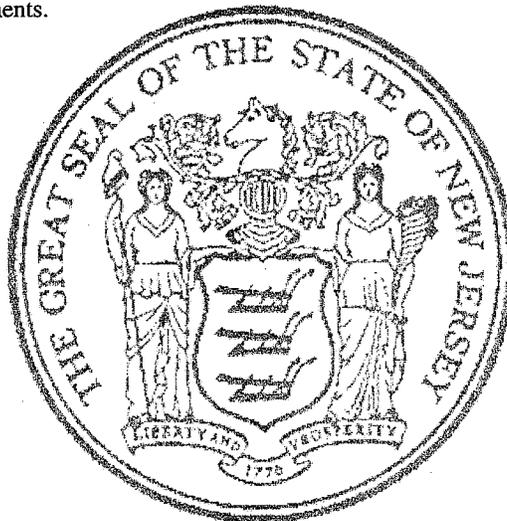
Sponsored by:
Assemblyman VINCENT PRIETO
District 32 (Bergen and Hudson)

SYNOPSIS

Proposes constitutional amendment to require payments by State to State-administered retirement systems and establish in Constitution right of public employees to pension benefit; provides for enforcement of funding obligations and benefit rights.

CURRENT VERSION OF TEXT

As reported by the Assembly Judiciary Committee on December 17, 2015, with amendments.



1 A CONCURRENT RESOLUTION proposing to amend Article VII of
 2 the New Jersey Constitution by adding a new Section IV and to
 3 amend Article VIII, Section II, paragraphs 2 and 3.

4

5 **BE IT RESOLVED** by the General Assembly of the State of New
 6 Jersey (the Senate concurring):

7

8 1. The following proposed amendment to the Constitution of
 9 the State of New Jersey is agreed to:

10

11 PROPOSED AMENDMENT

12

13 a. Amend Article VII by adding a new Section IV to read as
 14 follows:

15

16 1. a. The State shall make its annual required contribution to
 17 each retirement system and pension fund for public employees
 18 administered by the State as that contribution is determined by the
 19 board of trustees of each system or fund in consultation with the
 20 actuary for that system or fund. The annual normal contribution
 21 plus the annual unfunded accrued liability contribution together
 22 shall be the annual required contribution. The actuary for each
 23 system or fund shall compute the annual required contribution
 24 based on an annual valuation of the assets and liabilities of the
 25 system or fund pursuant to consistent and generally accepted
 26 actuarial standards.

27

28 The State shall commence making its annual required
 29 contribution in full to each retirement system and pension fund for
 30 public employees administered by the State in the State fiscal year
 31 that commences July 1, 2021 and shall make the required
 32 contribution in full in each fiscal year thereafter. Commencing July
 33 1, 2017, the State shall make a payment to each retirement system
 34 and pension fund of at least ¹~~6/10ths~~ 4/8ths¹ of the full annual
 35 required contribution for each system and fund for that State fiscal
 36 year and a payment that increases by at least an additional
 37 ¹~~1/10th~~ 1/8th¹ of the full annual required contribution for each
 38 system and fund for each subsequent fiscal year until payment of
 39 the full contribution is required to be made commencing July 1,
 40 2021. The required contribution to be made by the State shall be
 41 paid in each State fiscal year to each system and fund on the
 42 following schedule: at least 25 percent by August 1; at least 50
 43 percent by November 1; at least 75 percent by February 1; and at
 44 least 100 percent by May 1.

45

The amount of the contribution to be made to each retirement
 system and pension fund by the State shall be included in the
 general appropriation law for each State fiscal year. The payment

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AJU committee amendments adopted December 17, 2015.

1 of the required contributions to be made by the State pursuant to
2 this subparagraph shall be an indefeasible obligation of the State.

3 b. Vested members of a retirement system or pension fund for
4 public employees administered by the State who were members of a
5 system or fund prior to May 21, 2010 and who attained five years of
6 service credit in the system or fund and were provided pursuant to
7 law with a non-forfeitable right to receive benefits shall have an
8 indefeasible non-forfeitable right to receive benefits as provided
9 under the laws governing the system or fund upon the attainment of
10 five years of service credit in the retirement system or fund. A
11 "non-forfeitable right to receive benefits" shall mean that the
12 benefits program, for any employee for whom the right has
13 attached, cannot be reduced.

14 Vested members of a retirement system or pension fund for
15 public employees administered by the State for whom the non-
16 forfeitable right was not provided by law who attain ten years of
17 service credit shall have an indefeasible right to receive the benefits
18 earned each year under the laws governing the system or fund.

19 This paragraph shall not be construed to preclude forfeiture,
20 suspension, or reduction in pension benefits for dishonorable
21 service by a member.

22 c. Except as expressly provided in this paragraph and only to
23 the extent so expressly provided, nothing in this paragraph shall be
24 deemed to (1) limit the right of the State to alter, modify, or amend
25 retirement systems and pension funds for public employees
26 administered by the State, or (2) create in any member a right in the
27 corpus or management of such a retirement system or pension fund.
28 The rights reserved to the State in this paragraph shall not diminish
29 or reduce the indefeasible obligations of the State and the
30 indefeasible rights of members established by subparagraphs a. and
31 b. of this paragraph.

32 d. The obligations and the rights set forth in this paragraph and
33 in Article VIII, Section II, paragraph 2 shall be enforceable in the
34 courts of this State. The courts of this State shall have jurisdiction
35 over any action brought by a member of any system or fund or any
36 board of trustees of such system or fund to enforce the obligations
37 and rights set forth in this paragraph. The State shall submit to the
38 jurisdiction of the courts and shall not assert sovereign immunity in
39 such an action.

40 e. The provisions of this paragraph shall be given effect
41 notwithstanding any other provision of this Constitution, provided,
42 however, that the appropriation obligation in subparagraph a. of this
43 paragraph is subject to and subordinate to appropriations for State
44 general obligation bonds heretofore authorized in accordance with
45 Article VIII, Section II, paragraph 3 of this Constitution.

46
47 b. Amend Article VIII, Section II, paragraphs 2 and 3 to read
48 as follows:

1 2. No money shall be drawn from the State treasury but for
2 appropriations made by law. All moneys for the support of the State
3 government and for all other State purposes as far as can be
4 ascertained or reasonably foreseen, shall be provided for in one
5 general appropriation law covering one and the same fiscal year;
6 except that when a change in the fiscal year is made, necessary
7 provision may be made to effect the transition. No general
8 appropriation law or other law appropriating money for any State
9 purpose shall be enacted if the appropriation contained therein,
10 together with all prior appropriations made for the same fiscal
11 period, shall exceed the total amount of revenue on hand and
12 anticipated which will be available to meet such appropriations
13 during such fiscal period, as certified by the Governor. No general
14 appropriation law for a fiscal year shall be enacted without
15 including appropriations for the State contributions to each
16 retirement system and pension fund for public employees
17 administered by the State required pursuant to other provisions of
18 this Constitution.
19 (cf: Art.VIII, Sec.II, par. 2)

20
21 3. a. The Legislature shall not, in any manner, create in any
22 fiscal year a debt or debts, liability or liabilities of the State, which
23 together with any previous debts or liabilities shall exceed at any
24 time one per centum of the total amount appropriated by the general
25 appropriation law for that fiscal year, unless the same shall be
26 authorized by a law for some single object or work distinctly
27 specified therein. Regardless of any limitation relating to taxation in
28 this Constitution, such law shall provide the ways and means,
29 exclusive of loans, to pay the interest of such debt or liability as it
30 falls due, and also to pay and discharge the principal thereof within
31 thirty-five years from the time it is contracted; and the law shall not
32 be repealed until such debt or liability and the interest thereon are
33 fully paid and discharged. Except as hereinafter provided, no such
34 law shall take effect until it shall have been submitted to the people
35 at a general election and approved by a majority of the legally
36 qualified voters of the State voting thereon.

37 b. On and after the date on which this subparagraph b. becomes
38 part of the Constitution, the Legislature shall not enact any law that,
39 in any manner, creates or authorizes the creation of a debt or
40 liability of an autonomous public corporate entity, established either
41 as an instrumentality of the State or otherwise exercising public and
42 essential governmental functions, which debt or liability has a
43 pledge of an annual appropriation as the ways and means to pay the
44 interest of such debt or liability as it falls due and pay and
45 discharge the principal of such debt, unless a law authorizing the
46 creation of that debt for some single object or work distinctly
47 specified therein shall have been submitted to the people at a
48 general election and approved by a majority of the legally qualified

1 voters of the State voting thereon. Voter approval shall not be
2 required for any such law providing that the ways and means to pay
3 the interest of and to pay and discharge the principal of such debt or
4 liability shall be subject to appropriations of an independent non-
5 State source of revenue paid by third persons for the use of the
6 single object or work thereof, or from a source of State revenue
7 otherwise required to be appropriated pursuant to another provision
8 of this Constitution.

9 c. No voter approval shall be required for any such law under
10 subparagraphs a. or b. of this paragraph authorizing the creation of
11 a debt or debts in a specified amount or an amount to be determined
12 in accordance with such law for the refinancing of all or a portion
13 of any outstanding debts or liabilities of the State, or of an
14 autonomous public corporate entity, established either as an
15 instrumentality of the State or otherwise exercising public and
16 essential governmental functions, heretofore or hereafter created, so
17 long as such law shall require that the refinancing provide a debt
18 service savings determined in a manner to be provided in such law
19 and that the proceeds of such debt or debts and any investment
20 income therefrom shall be applied to the payment of the principal
21 of, any redemption premium on, and interest due and to become due
22 on such debts or liabilities being refinanced on or prior to the
23 redemption date or maturity date thereof, together with the costs
24 associated with such refinancing.

25 d. All money to be raised by the authority of such law shall be
26 applied only to the specific object stated therein, and to the payment
27 of the debt thereby created.

28 e. This paragraph shall not be construed to refer to any money
29 that has been or may be deposited with this State by the government
30 of the United States. Nor shall anything in this paragraph contained
31 apply to the creation of any debts or liabilities for purposes of war,
32 or to repel invasion, or to suppress insurrection or to meet an
33 emergency caused by disaster or act of God. Nor shall anything in
34 this paragraph apply to the indefeasible obligation of the State to
35 make contributions to each retirement system and pension fund for
36 public employees administered by the State as required pursuant to
37 other provisions of this Constitution.

38 (cf: Art.VIII, Sec.II, par. 3; amended effective December 4, 2008)

39
40 2. When this proposed amendment to the Constitution is finally
41 agreed to pursuant to Article IX, paragraph 1 of the Constitution, it
42 shall be submitted to the people at the next general election
43 occurring more than three months after the final agreement and
44 shall be published at least once in at least one newspaper of each
45 county designated by the President of the Senate, the Speaker of the
46 General Assembly and the Secretary of State, not less than three
47 months prior to the general election.

1 3. This proposed amendment to the Constitution shall be
 2 submitted to the people at that election in the following manner and
 3 form:

4 There shall be printed on each official ballot to be used at the
 5 general election, the following:

6 a. In every municipality in which voting machines are not used,
 7 a legend which shall immediately precede the question as follows:

8 If you favor the proposition printed below make a cross (X), plus
 9 (+), or check (✓) in the square opposite the word "Yes." If you are
 10 opposed thereto make a cross (X), plus (+) or check (✓) in the
 11 square opposite the word "No."

12 b. In every municipality the following question:
 13

	<p>YES</p>	<p style="text-align: center;">CONSTITUTIONAL AMENDMENT CONCERNING STATE PENSION PAYMENTS AND PUBLIC EMPLOYEE PENSION BENEFITS</p> <p>Do you approve amending the Constitution to require the State to make its payment to the pension systems for public employees each year and to establish in the Constitution the rights of public employees vested in these pension systems to receive earned pension benefits?</p> <p>The State would have until July 1, 2021 to start making each year's pension payment in full. Until then, the State would make a partial, but increasing, payment each year. The payment would be made on a quarterly basis.</p>
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INTERPRETIVE STATEMENT	
NO	<p>This amendment to the Constitution concerns the State's payment to the pension systems for public employees and the pension benefits of those employees.</p> <p>Current law, adopted in 2011, required the State to make its pension payment each year. The New Jersey Supreme Court ruled that the State could not be compelled to make the payment because of certain provisions in the Constitution. This amendment is a response to that ruling.</p> <p>This amendment would require the State to make its pension payment each year as a constitutional obligation. The obligation would be enforceable in the State courts. Payment of the full amount would start July 1, 2021. Until then, partial, but increasing, payments would be made each year. Quarterly payments would be made on the first day of August, November, February, and May of each year.</p> <p>This amendment requires the annual State budget law to include the pension payment.</p> <p>Current law provides a non-forfeitable right to receive a pension benefit for vested public employees who were employed before May 21, 2010. This amendment would incorporate that right into the Constitution. This amendment would establish the right of vested public employees hired after May 21, 2010 to receive earned pension benefits after ten years of service. These rights would be enforceable in the State courts. This amendment does not increase any pension benefit.</p>

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ASSEMBLYMAN JOHN F. McKEON (Chair): Magic words, please.

MS. BAVATI (Committee Aid): ACR-3 (1R) proposes a constitutional amendment to require payments by the State to State-administered retirement systems, and establish in the Constitution the right of public employees to pension benefits.

ASSEMBLYMAN McKEON: Okay.

MS. BAVATI: Roll call?

ASSEMBLYMAN McKEON: Yes, please; roll call. I apologize.

MS. BAVATI: Roll call on ACR-3 (1R).

Assemblywoman Schepisi.

ASSEMBLYWOMAN SCHEPISI: Still present. (laughter)

MS. BAVATI: Assemblyman Brown.

ASSEMBLYMAN BROWN: Here.

MS. BAVATI: Assemblyman Caputo.

ASSEMBLYMAN JOHNSON: He's here.

MS. BAVATI: He's here?

Assemblyman Lagana.

ASSEMBLYMAN LAGANA: Here.

MS. BAVATI: Assemblyman Johnson.

ASSEMBLYMAN GORDON M. JOHNSON (Vice Chair):
Here.

MS. BAVATI: Chairman McKeon.

ASSEMBLYMAN McKEON: Present.

Jennifer Keyes-Maloney, New Jersey Principals and Supervisors Association, in favor, with no need to testify.

I'm going to just try to read everybody who has not signed up to testify.

Rex Reid, of AFSCME, in favor, no need to testify; Kevin McCarthy, the President of the IFPTE Turnpike Local 194, no need to testify. Come on, Kevin, come up; it's three times that there was "no need to testify." (laughter)

Lisa Ginther of MBI-GluckShaw, on behalf of IBEW, no need to testify, in favor; Lisa -- you must have just put it in twice, Lisa; yes. George Borek of Professional Firefighters of New Jersey, in favor, no need to testify; New Jersey Firefighters Mutual Benefit Association, NJFMBA, no name, per se, but in favor, no need to testify; Seth Anderson-Oberman, AFT New Jersey, in favor, no need to testify; Michele Liebttag of CWA, in favor, no need to testify.

Let me see who else I have with "no need to testify" before I call people up.

Yes, I have some -- Gail Miner, opposed, no need to testify; Nancie Shauger, opposed, no need to testify. I'm almost there, guys; just a lot of slips.

Tom Bracken -- Tom -- from the State Chamber of Commerce, opposed. And please join us.

THOMAS BRACKEN: Thank you, Mr. Chairman.

First of all, let me say that this is a major issue in the State of New Jersey that needs resolution. It is an issue that impacts everybody in our state. There is a direct impact on, I believe -- if I read the numbers right -- 800,000 potential pension recipients. But the direct impact is, again, 10 percent of the people in the State of New Jersey.

There is a right way to do things and a wrong way to do things. Again, we are not opposed to addressing this issue in a very aggressive way, because it needs to be addressed; and we want to do what's fair for everybody involved. But we do not feel the way to do this is through a constitutional amendment.

The Constitution that we have is a sacred document. It is a document of principles; it is a document that has the unalienable rights of the citizens of New Jersey embedded in it, and it is meant to positively impact the majority of the citizens of the State of New Jersey.

When all of you, as Legislators, were elected, you were elected by the citizens to legislate -- not to be a conduit of items from inception to the Constitution without proper legislation. You also all took an oath of office; and in that oath of office, you said you would defend the Constitution of the State of New Jersey, and you said you would do the right thing for the citizens of New Jersey -- in this case, we define *citizens* as the majority of the people impacted.

There will be times when there are items that require and need to be considered for inclusion in the Constitution. When that happens, the things that need to be embedded in that discussion are proper vetting; the time to educate the public in a proper way; and making sure that, when the voting public goes into that voting booth, they have more than a one-paragraph definition on what they're voting on -- because we're talking about, now, invading the Constitution and putting things into the Constitution that are, again, the basic principles of life in the State of New Jersey.

We are vehemently opposed to this issue being embedded in the Constitution. Again, the issue of impacting the majority of the citizens -- which the Constitution is all about -- this does not do that. It has a direct benefit to 10 percent or less of the people of New Jersey and, therefore, needs to be adjudicated and resolved in a very different way, and not put into our Constitution because of the minority of people that it does impact directly.

So I would say that this is absolutely the wrong thing to do, with regard to this issue. It is irresponsible of our legislators to consider putting this into the Constitution because you were not elected to do that; and also, you are violating your oath of office by doing that. And putting this into our Constitution would cause irreparable harm to the Constitution, and also to the citizens of New Jersey.

Thank you.

ASSEMBLYMAN McKEON: Thank you very much, Tom.

Tony Russo, Commerce and Industry Association of New Jersey, opposed.

Tony.

A T H O N Y R U S S O: Again, Mr. Chairman, thank you.

I submitted written testimony; so I just want to, again, raise a few points as to why this is not a good thing, and why we oppose this resolution.

ASSEMBLYMAN McKEON: Thank you for the summary; I appreciate it.

MR. RUSSO: Thank you.

So why we're opposed to this is because, if you put this on the ballot and mandate that these pension payments be made, we have no doubt that this is going to impact our economy. If you play out when this goes into effect -- and let's just say we're in a deficit, and we now owe the pension payment -- this is just really going to take away from other parts of our budget, which is not good.

And as Tom Bracken had mentioned, we do think that when it comes to the State budget, and when you carve out 10 to 15 percent of the State budget-- So if the pension payments are \$3 billion, \$5 billion, and now you make it mandatory -- gone is that dialogue, that debate that is so important. And that's where that compromise is reached -- every time the Legislature talks about the budget. It's one of those things, Mr. Chairman, that we just have no doubt that will impact us negatively.

I have to tell you that a lot of times when we alert our members -- sometimes I get feedback, sometimes I don't. The phones lit up on this one. I got e-mails, phone calls saying, "What is New Jersey trying to do here? Are they not reading what's going on in Puerto Rico; are they not reading what's going on in Illinois -- that they're faced with these deficits?" And if you look at what our unfunded liability is -- \$80 billion; \$80 billion. And what kind of assurances are we going to have that, fast forward again, this is in effect -- the only way a Governor or Legislature can make up that payment is to do two things -- right? -- cut critical spending to programs, or raise taxes.

And I know we're not supposed to mix testimony from the previous ACRs, but--

ASSEMBLYMAN McKEON: Don't get me crazy.

MR. RUSSO: I'm sorry?

ASSEMBLYMAN McKEON: Don't get me crazy. (laughter)

MR. RUSSO: Okay, I'll be real quick about it.

ASSEMBLYMAN BROWN: That's my job.

MR. RUSSO: But the point I'm trying to make, Mr. Chairman, is that every June we're always looking for money, right? And so something like this is going to scare away that investment. And where does investment go? It goes where it's welcomed. And we need to open our arms up and welcome this investment. And we feel that by mandating these pension payments for 10 percent of our population is just the wrong way to go, and it's going to have deleterious effects on our economy. And we urge everybody to vote "no."

Thank you.

ASSEMBLYMAN McKEON: Thank you very much.

Richard Miner; again, I don't know if you signed up--

RICHARD T. MINER: (off mike) Yes, right here.

ASSEMBLYMAN McKEON: Yes; yes, Richard. Come on up.

MR. MINER: Thank you.

ASSEMBLYMAN McKEON: And Richard, you'll limit this to ACR-3, okay? We had made your record noted on the other two earlier when you weren't--

MR. MINER: I just want to note that there was a hearing simultaneously downstairs, and I was at that hearing and that is why I didn't make the first two.

ASSEMBLYMAN McKEON: We appreciate that.

MR. MINER: Should I start, or wait for the next person?

ASSEMBLYMAN McKEON: Please, please.

MR. MINER: Yes; nobody is suggesting that the people on pensions shouldn't be paid; in fact, they have been paid. And the current Administration has put more money into the pension funds than the last three Administrations combined.

The problem is, that when you put it in the Constitution and require it as a payment without knowing whether you're going to collect the tax revenues in that given year, you're going to put yourself in a real bind. And it's been estimated that the payments might be \$6 billion, and there's no explanation of where you are going to get it -- as far as raising taxes or cutting expenses -- to cover that; I guess it was \$3 billion to \$6 billion, approximately -- how you're going to cover that gap.

And the fear of many -- including myself and the other speakers -- is we're driving the job creators out of the state; we're driving out the people with wealth-- We've driven billions of dollars worth of wealth out of New Jersey, and that wealth isn't coming back. Right now, we have the highest property taxes in the nation. Whether you go by the assessed value, or whether you go by the income of the people in the state, we are dead last with the highest property taxes.

When you take the four main taxes -- property, income, sales, and corporate taxes -- and don't forget, the corporations are the ones that hire the people -- we come in 50; dead last. When it comes to people coming into the state versus leaving the state, it's a 60 percent spread. The United Van Lines Index, which compares people leaving to people coming in, they put us dead last; we're 50th. More people are fleeing New Jersey than anywhere else.

Recently, there were articles in *Investors Business Daily* on Connecticut and Illinois -- on how similar policies are causing people to flee those two states; and we're number three. We're in a race with Connecticut, Illinois, and New Jersey to see which one will go bankrupt first. And the previous speaker mentioned Puerto Rico. We could be a Puerto Rico situation; we could start looking like Detroit, where we can't repair our roads, where the services fall apart.

Harrisburg, Pennsylvania, the state capital, has already filed bankruptcy under Chapter 9. San Bernardino, California, has filed bankruptcy. We could join the list of bankrupt states and cities if we bind our hands with this constitutional amendment. These payments should be worked out every year based on the revenues coming in. We might have a recession, we might have a boom. Some years we can put in more, some years it will be less.

So I submit that this should not bind the State with a permanent requirement to meet this obligation to 10 percent of the population, while hurting the other 90 percent -- including the people who are going to receive this, because a lot of them flee the state as soon as they can.

Thank you.

ASSEMBLYMAN McKEON: Thank you, sir.

Bill Eames.

Is Barbara Eames here as well?

WILLIAM EAMES: Yes.

ASSEMBLYMAN McKEON: Hey, Barbara; come on up. Sorry we missed you on the other two.

MR. EAMES: Think the microphone is on? (referring to PA microphone) Okay.

ASSEMBLYMAN McKEON: Yes, just hit red, and then it will be on.

MR. EAMES: I think it's on.

ASSEMBLYMAN McKEON: I think so too.

MR. EAMES: There's no light on this one, so--
Again, gentlemen and ladies, thank you for your time; thank you--

ASSEMBLYMAN McKEON: Bill, let me just make sure. Is this coming through? I know this streams on the Internet and otherwise.

UNIDENTIFIED MEMBER OF AUDIENCE: (off mike)
We're not streaming, but you can hear them (indiscernible) not so much.

ASSEMBLYWOMAN SCHEPISI: The red light is on the console on that one.

ASSEMBLYMAN McKEON: It's on.

ASSEMBLYWOMAN SCHEPISI: It's on.

ASSEMBLYMAN McKEON: I just wanted to make sure it was on for you. We're all good.

MR. EAMES: Understood; okay.

Gentlemen and ladies, this State and its political subdivisions face a moral dilemma on this one. Legal contracts that were negotiated, in my opinion, by irresponsible public representatives, way overdoing some of these things -- but municipal, county, State -- with excessive promises of benefits, and then never fully funded.

You've heard about the unfunded liabilities. A proper constitutional amendment would be to put the unfunded liabilities on the State budget so we can all see how bad it is. But having failed to win full funding in the present political environment and in the courts, right now we're now trying to serve union labor without a balancing regard for the fiscal integrity of the State, and the need for that flexibility that I mentioned in my earlier testimony.

The taxpayers did not negotiate these contracts, but they will be held accountable for paying the cost.

The State does face financial stress; we've seen lower credit ratings and we've seen an increasing exodus of our population. As significant blocks of funding are dedicated through the Constitution -- through, again in my opinion, bad political policy and with inadequate and misleading explanatory statements to the voters -- the Legislature and the Executive are going to be hamstrung. Your ability to deal with future budget situations -- and there will be more of them, and our money will be tighter and tighter as time goes on -- is going to be devastating. This is not good public policy. This will further disadvantage New Jersey in its ability to try and compete with other states.

So this proposal removes legislative and executive discretion, and I think it will create economic havoc in the short- and middle-term, and I think it is bad policy. I would urge you, I would urge those who will vote on this in the Assembly and in the Senate, and I would urge the public at large not to pass this amendment.

Thank you.

ASSEMBLYMAN McKEON: Thank you, sir.

Barbara; Barbara Eames.

B A R B A R A E A M E S: Good morning.

ASSEMBLYMAN McKEON: Good morning to you.

MS. EAMES: And I appreciate-- I am one of your constituents, Assemblyman. I live in Whippany in Morris County.

ASSEMBLYMAN McKEON: I'm familiar with you.

MS. EAMES: Yes.

ASSEMBLYMAN McKEON: I think Mr. Eames was a candidate for office, as a matter of fact.

MS. EAMES: I think so, yes. (laughter) We're friendly opponents; let's put it that way.

ASSEMBLYMAN McKEON: Not *opponents*; friendly. (laughter)

MS. EAMES: I'm speaking as a member of the public today. And having sat in on the hearing downstairs, I was called for this one -- but was previously here, but I was downstairs.

I have to say that I feel underrepresented as a member of the public when we sit here and we hear constituencies -- or rather different associations and lobbying organizations come and speak before you. And if I could speak to you about anything today, I would speak to you the language of liberty, which I don't think exists in the State of New Jersey anymore. And I think we're victims of that, really, from both political parties in a number of instances.

These four issues should not be on the ballot. They should not be in a constitutional amendment which will forever bind the State to them.

I am referencing the pension amendment. I would say that I

am a retired teacher. I figure I lose either way because, if this is put in the Constitution, and the payments are mandated, it will accelerate New Jersey's bankruptcy. And if the pension payments aren't made, because we go bankrupt, I lose there, too. So either way, I figure I come out a loser here.

But I would like to speak to, and focus on, the constitutional issues and the issues of liberty. As Mark Twain famously stated many years ago, "No man's life, liberty, or property are safe while the legislature is in session," and I would like to emphasize that I feel that way as a member of the public.

To quote a very famous former U.S. President -- many years ago, in his wisdom, said, "All obstructions to the execution of the laws, all combinations and associations, under whatever plausible character, with the real design to direct, control, counteract, or awe the regular deliberation and action of the constituted authorities," and that's what's going on here, "are destructive of this fundamental principle of liberty, and of fatal tendency. They serve to organize faction, to give it an artificial and extraordinary force; to put, in the place of the delegated will of the nation the will of a party, often a small but artful and enterprising minority of the community; and, according to the alternate triumphs of different parties, to make the public administration the mirror of the ill-concerted and incongruous projects of faction, rather than the organ of consistent and wholesome plans digested by common counsels and modified by mutual interests.

"However combinations or associations of the above description may now and then answer popular ends, they are likely, in the course of time and things, to become potent engines, by which cunning, ambitious,

and unprincipled men will be enabled to subvert the power of the people and to usurp for themselves the reins of government, destroying afterwards the very engines which have lifted them to unjust dominion.”

Those are the words of President Washington upon his resignation speech in 1796.

These amendments -- all of them, and certainly the pension -- contribute to the terrible financial condition of the state. I've been born, raised in New Jersey; I've lived here my entire life. I can tell you the reason I'm still here is because I have family here. If that were not the case, I would have fled to some other place. And that's in my mind every day; I'm very saddened to say that.

The people should be given the right to decide these issues. But putting it on the ballot -- it will be worded in a way that it looks necessary, it protects us; it always is. People do not have the ability, given the information that will be out there, to make an intelligent decision. We elect you folks to do that; not to bind your hands through the Constitution. It merges the powers when they should be separated; and consolidates the power of government, and that takes it away from the people.

I would just end my remarks with saying that manipulating the system by pandering to different constituencies for political benefit betrays the sacred trust placed on elected officials, and undermines the integrity of the governmental system. The Legislature may have the ability to pass these four amendments to the Constitution, but that does not mean it has the moral authority to do so.

Vote “no” on these amendments.

Thank you for your time.

ASSEMBLYMAN McKEON: Thank you very much.

Frank Walits, opposed; as well as Jennifer Reppert, opposed. It indicates that both-- Hey, Jennifer.

Is Mr. Walits here? W-A-L-I-T-S? (no response)

Please, Jen.

JENNIFER REPERT: Okay, I oppose.

Mandate that State revenues fully fund all pension funds -- once again, financial management details don't belong in the Constitution. The State cannot pay these benefits; we are not in a good financial position.

Legislators who want to get reelected will, once again, kick their preverbal can down the road without addressing the problem.

More of the same that put us in this financial situation we are in. Sadly, this will affect all the innocent young citizens -- all of our children and grandchildren.

Thank you.

ASSEMBLYMAN McKEON: Thank you very much.

Richard Klausner of the NJ AFL-CIO, in favor.

I still messed it up: Eric Richard, Robert Klausner. (laughter)

Too many first names on the list there.

ERIC RICHARD: Yes.

Good afternoon, Chairman.

ASSEMBLYMAN McKEON: Good afternoon.

MR. RICHARD: Good afternoon, members of the Committee.

Thank you very much for the opportunity to come before you this afternoon.

My name is Eric Richard, representing the AFL-CIO.

I'm going to heed your recommendation, Chairman. We have spoken at length to you and this exact Committee on prior occasions, and therefore I thought perhaps it would be worth the Committee's attention to hear from a different perspective -- our attorney's perspective -- on the amendment before you.

And so I will introduce Robert in just a moment. But I really just want to make one single point before I hand it over, Chairman

ASSEMBLYMAN McKEON: Eric, what in God's name made you think us listening to an attorney was something we would want to do? (laughter) -- with due respect to the witness.

MR. RICHARD: Assemblyman Caputo referenced the previous resolution by saying you didn't put yourself into this hole, but you now have been stuck with dealing to get yourself out of this hole. That is a terrific introduction for the resolution that you're debating this morning on pensions. There are 800,000 people here in the State of New Jersey who are beneficiaries of the pensions systems -- the various pensions system. They have paid their share. They are the only ones who, in fact, have done their share to ensure that they have a very small piece of retirement security after 25, 30, 35 years of service.

There has been a lot of discussion about the use of amendments for the Constitution. Just six short years ago, the Unemployment Insurance Fund was bankrupt. It was so bad that, during the peak of a recession, we couldn't pay our benefits. We had to borrow from the Federal government.

The amendment before you, I'm sad to say, is allowing us to save ourselves from ourselves. The Unemployment Insurance amendment was passed six years ago by the Legislature; it was passed by the voters of

the state. And now we have an Unemployment Insurance Fund before you today that is solvent and that is functioning the way it was properly intended. Approximately an hour ago we debated the TTF allocation -- a constitutional amendment. Again, to dedicate funds for a system that is teetering on the brink of insolvency. Everyone here -- bipartisan, business, labor -- supported that resolution. And now before you today we have witness after witness saying that this is an improper use of the constitutional amendment.

I'll leave my thoughts on that to myself. But I would ask you to please take into consideration the 800,000 members who have done their share, who have done their part; and are now asking you, our elected officials, to do your part.

With that, I would like to turn it over to Robert. Robert was one of three attorneys who argued the recent New Jersey State Supreme Court decision -- Burgos. He has argued before the United States Supreme Court on public pension matters. He's been practicing law for 39 years on public pension issues and, currently, is an attorney to three of the largest pension funds here in the State of New Jersey: PERS, TPAF, and PFRS.

Thank you, Chairman.

ASSEMBLYMAN McKEON: Thank you; with that great credentialed--

ROBERT D. KLAUSNER, Esq.: Thank you.

Chair, Assembly members -- thank you for the privilege of speaking before you today.

I want to start by dispelling a legal misstatement that I've heard a lot. A State cannot declare bankruptcy. A municipal corporation, if the

State permits it, can declare bankruptcy. In our Republican form of government -- our Federal Republic -- states are sovereign. You cannot escape your debts unless you just don't pay them. So there is no bankruptcy escape hatch for you; there is no way to lawfully avoid the payment of deferred wages.

The issue that's facing you isn't the annual cost of the pension benefits. This is the consequence of New Jersey underpaying its pension obligations for pretty much the last 98 years. You first had a legislatively convened commission in 1919, right after the end of the First World War, to talk about the fact that the pension systems -- which were first established in the 1880s -- were insufficiently funded; and actually predicted that without funding discipline, the State-run retirement systems would see true insolvency in the first decades of the 21st century.

Well, the one fact that isn't in dispute -- all the actuaries, all the mathematicians, all the accounting people, the Budget Office people, the pension funds actuaries -- they all agree on one thing: We're out of money, and we're out of time. We will begin being unable to pay pension benefits as soon as seven years. And just to put a picture on what that does to the New Jersey economy -- because there has been some discussion about the economy: According to the National Institute for Retirement Security -- which is a nonpartisan think tank on retirement issues headquartered in Washington -- for every \$1 that the taxpayers contribute to the retirement system, it generates \$8.82 of economic activity in New Jersey. The public pension-- The payments that are received by the pensioners support 100,000 jobs in New Jersey, which would be lost without those payments.

The pension payments generate \$15.3 billion annually in economic activity in New Jersey -- including paying \$1 billion in State and local taxes -- all of which will be lost; not to mention the social cost of who is going to support the hundreds of thousands of people who won't have any money if you run out.

The Constitution is exactly the place to put this. The Supreme Court said, in the Burgos decision, that in 1997 when you passed Chapter 113 in the laws of New Jersey it created a "nonforfeitable right to benefits which members earned as deferred compensation for their service." The Burgos court said last year, in its opinion -- in the first paragraph it said, "That these men and women must be paid their pensions, when they become due, is beyond question." Period.

It is a constitutional obligation already of the State to make the payments. And whether you pay them through the pension system or you pay as you go will ultimately be the choice of either this body or the people. And as I -- someone who taught law school for a long time, and has had the privilege of representing more than 150 state and local government pension systems in about half of our states-- I'm a reader of state constitutions. And yours says, in Article 1, that "all political power resides in the people." So it seems to me if the people are going to be the ones who bear the economic consequence of how you decide to fund this, then the people ought to be the ones who set the solution.

Because the Supreme Court said you can't set the funding solution because of the debt limitation's clause and the appropriations clause. Because as we all recall, Chapter 78, the Laws of 2011, was a deal that everybody made, with fanfare and bipartisan support, Administration

support, legislative support. And then the Administration itself challenged it in the Burgos decision, and was successful in saying that absent an appropriation which the two political branches of the government can agree upon, there is no guaranteed way to make -- fund the retirement systems. The Supreme Court also said, at the same time, the payments are constitutionally required to be made when they become due.

The unfortunate circumstances that -- one of the things that New Jersey has missed is the economic engine that really drives its pension systems. Sixty percent of the long-term cost of every public employer-defined benefit retirement system is, ultimately, paid for by market returns -- by the capital markets in this country. Now, the average state retirement system in this country is funded at more than 80 percent of assets-to-liabilities. New Jersey is dead last, in the 30s. I don't know what it is today, but it's below 35 percent of assets-to-liabilities. And that's why you're facing a run-out.

The only two states that have specifically said funding is not a constitutional guarantee, along with the benefits, are the two other states that sit at the bottom of the funding heap with you -- and that's Kentucky and Illinois. Yet the Illinois Supreme Court has said, as late as last year, "You have to pay the benefits when they become due."

Constitutionally, you do not have a way to avoid the payment. But I will tell you that all of your own economic experts have said that if you have to go to a pay-as-you-go system, it will cost you three times what it's going to cost to make the contributions necessary to properly fund these systems. The constitutional resolution that's before you -- which, respectfully, the AFL-CIO thinks, strongly, belongs in front of the electors,

because this involves them-- It involves not only those who will receive it -- you have 800,000 participants in these retirement plans; most of them live in New Jersey. Beyond that, you have spouses and children who are also going to be dependent on these retirement benefits, either as survivor benefits or for the support of the disabled workers that you have. So now you're stretching more -- that it's about 13 or 14 percent of your population will be directly impacted by the insolvency.

Ultimately, New Jersey has to settle its own problems. You don't need a lawyer from Florida to tell you how to fund it. But I am telling you, from a legal standpoint, as someone who has done this for, like I said, almost 40 years, that you will have to pay it. And unlike the Federal government, which prints money, you can't. And if you don't make-- If this is not placed before the electors -- and hopefully the electors will adopt it -- it will, in fact, doom New Jersey to a much-worse economic circumstance than what it faces, by having to make the difficult decisions that it has failed to make.

This isn't about blame, and it isn't about the incumbents who sit in this body today. Lots of Governors and lots of predecessors from this body put you in the situation that you're in today. You, however, are the people who said, "Elect me, and allow me to solve the problem." Well, the best way to solve the problem is to say to the electors, "Unless we guarantee these payments, we cannot be assured that our pension funds will not run dry."

Ironically, your pensions are among the least generous in the country; I think you're 95th out of 100 in terms of the level of benefits paid for by State-supported retirement systems. The consequence that you have

now is not poor investment; it's the non-deposit of the monies that were required.

And I thank you for the opportunity to speak before you. And, along with Eric Richard, on behalf of the AFL-CIO--

ASSEMBLYWOMAN SCHEPISI: Mr. Chairman--

MR. KLAUSNER: --I strongly urge you-- I'm sorry?

ASSEMBLYWOMAN SCHEPISI: I'm sorry.

MR. KLAUSNER: Yes, ma'am. We strongly urge you to forward the resolution to the electors.

I'm sorry, Assemblywoman.

ASSEMBLYWOMAN SCHEPISI: Not a problem.

Mr. Chairman, as we've never been permitted to ask any questions on this particular, very important issue, and there's an attorney here from Florida who's just provided a lot of testimony -- I have a couple of just very pointed questions that I'd like to--

ASSEMBLYMAN McKEON: Please go forward.

ASSEMBLYWOMAN SCHEPISI: Okay, thank you.

With respect to-- And I think that pretty much any person who you would speak to, in the Assembly or the Senate, does agree that we have to make good on our pension obligations -- and trying to figure out the proper way to do so.

The questions that I have -- the logic in requiring the quarterly payments rely on two assumptions in the state: one, is that interest rates are lower than the rate of return, which currently we do have; and two, that the marketplace is willing to lend.

Now, I don't know if you're familiar with the fact that the State's Treasury has indicated that lenders are and have been unwilling to increase the State's line of credit; thus, borrowing would not be available from traditional sources, which would drive us to, potentially, having to go to hedge funds and other sorts of sources in order to make up that shortfall. Because, in every State -- first quarter, second quarter -- you're not having the revenue and the cash flow coming in.

God forbid we have another incident like Hurricane Sandy -- we're not going to have any sort of cash flow. We may not have the ability to make those borrowings. And as we have seen in global markets, credit markets do dry up, depending upon what's occurring in the entire global markets.

So in those particular instances, where would the money come from, one; and two, in Florida and in some of the other states in which you may practice, do you also have an activist court, whereby the only real line item that we would be able to draw that money from is education itself? And so, I'm trying to understand, because it becomes a situation whereby in trying to help a certain class of members, we're now harming them because we're going to have to go to cutting the funding there to pay for this. And I just want to see if, throughout your analysis, if any of these issues have come up, and you have actually looked at them?

MR. KLAUSNER: Well, I have looked at the proposed amendment. And I believe there is an exception for natural disasters -- or it certainly could be built in. I live -- I split my time between Florida and Louisiana, so I'm familiar with what hurricanes can do, and what other natural disasters can do, in terms of the public fisc.

But the reason why quarterly payments make sense is, New Jersey's been missing out on all of the investment opportunity of the \$15.5 billion that was not contributed just during the Christie Administration. And I'm not picking on him, but he is the Governor now.

ASSEMBLYWOMAN SCHEPISI: And you are aware that he has made more payments than all of the other Governors combined.

ASSEMBLYMAN McKEON: Okay, we sit-- I'm trying to work with you, Assemblywoman. Please.

MR. KLAUSNER: Okay. And I am aware that you have been putting in more money than you have in the past. But the problem is, there -- as the promise to put in more went away because of a specific challenge, the idea is to de-politicize the obligation to fund; that's why you want that. Also, quarterly payments are cheaper. It's like a mortgage. I mean, if you -- quite frankly, if New Jersey was a homeowner, it would have been evicted a long time ago and foreclosed on. If it was a car, it would have been hauled away by a tow truck in the middle of the night.

And these are difficult choices which you have to make about where the money comes from. It would be presumptuous of me -- who was not elected by the people -- to make these hard choices.

The Supreme Court took the position-- And if you have (*sic*) read the Burgos decision, I would encourage you, please, to do so; because the analysis is important. Less about the analysis -- the case analysis on the debt limitation clause or the appropriations clause. But the Court statement -- it said it's not going to do the job of the political branches of the government, which is to set the budgetary priorities for New Jersey. That's your job, respectfully. And how you find it -- you will have to find it,

and the only way any other government finds it -- and I'm a taxpayer, too -- is you either don't have some other government services, or you have to raise revenue.

As far as lending -- the great irony about well-funded pension systems is this: In the 1970s, when New York was on the verge of insolvency -- and the Federal government would not loan it money and New York state would not loan New York City money -- they went to their pension funds -- which, by the way, were fully funded -- and they loaned New York City the money to get through the cash crunch and, in return, got a pretty good investment break on an investment security that was junk-rated, that no one else would buy. And the pension funds were the only bank in town.

ASSEMBLYWOMAN SCHEPISI: So are you--

MR. KLAUSNER: I'm done.

ASSEMBLYWOMAN SCHEPISI: With that--

ASSEMBLYMAN McKEON: Are you finished? Go ahead, please; follow up.

ASSEMBLYWOMAN SCHEPISI: Are you suggesting that the pension -- the New Jersey pension would be the lending source to the State to make payments back to the pension for the quarterly pension?

MR. KLAUSNER: No.

ASSEMBLYWOMAN SCHEPISI: Okay.

MR. KLAUSNER: Because they are too weak to do so.

ASSEMBLYWOMAN SCHEPISI: Okay.

MR. KLAUSNER: The failure--

ASSEMBLYWOMAN SCHEPISI: No, but-- Okay.

MR. KLAUSNER: In a better funded situation, they could do that. There are a lot of public pension funds in the country that provide economic support to the plan sponsor, and either take back debt or build public works-types of projects, infrastructure projects, that can generate revenue -- like a toll road -- and thereby providing assistance from their own asset base.

ASSEMBLYWOMAN SCHEPISI: But that couldn't happen here.

MR. KLAUSNER: Were New Jersey's funds not so weak, economically -- yes, they would have been a proper source for that. Twenty years ago, we might have been able to have this discussion, and provide that support; today, it's too late.

ASSEMBLYWOMAN SCHEPISI: Okay. So just to wrap it up--

MR. KLAUSNER: Yes, ma'am.

ASSEMBLYWOMAN SCHEPISI: --there is no funding solution for it.

MR. KLAUSNER: The funding solution--

ASSEMBLYWOMAN SCHEPISI: We would have to cut the biggest line item, which is Education.

MR. KLAUSNER: Like I said, you're going to have to find the money within the budget that you have--

ASSEMBLYWOMAN SCHEPISI: Okay.

MR. KLAUSNER: --and the only way you do it is cut a program or raise revenue.

ASSEMBLYWOMAN SCHEPISI: Okay.

ASSEMBLYMAN McKEON: Like we've done for the last two years with the last two budgets that have been proposed.

But I digress.

Any other questions for this expert? (no response)

Seeing none, thank you, sir, very much; and thank you for traveling up from Florida.

MR. KLAUSNER: Thank you for the opportunity.

ASSEMBLYMAN McKEON: Michele Siekerka.

MICHELE N. SIEKERKA, Esq.: (off mike) (Indiscernible)

ASSEMBLYMAN McKEON: I got it; three times's the charm -- President and CEO of NJBIA.

MS. SIEKERKA: We said the third time would be the charm.

Thank you; good morning, again.

ASSEMBLYMAN McKEON: Good morning -- good afternoon.

MS. SIEKERKA: Yes, good afternoon.

We've submitted some comments; so I just want to emphasize some matters for this morning.

Thank you. I'm here this morning on behalf of NJBIA's 20,000 businesses, which represent 1.2 million jobs across the State of New Jersey. And I'm here this afternoon to oppose ACR-3.

I'd like to focus on some economic impacts that we can anticipate will be the result of ACR-3.

New Jersey's economy is just rebounding from the recession. And as you all know, we are still lagging the nation's recovery. There were some comments this morning, in another hearing, that we might be looking forward to the average of what we can expect from the national recovery, in

terms of revenue to states. And because we have lagged so far in the recession, that is not something we should be looking to.

I find it very interesting that when we talk about revenue -- that the person, the gentleman who spoke just before me, the attorney, talked about that there are only two options: and one is either cutting other programs; or raising other revenue. Let me suggest that mandating a significant portion of the annual State budget to one purpose is extremely problematic, for many reasons. Number one, it absolutely ties your hands and the hands of any future legislators and Governor when it comes to the budget process. Just think of how challenging your budget process is right now; we live through it each year. Now we're looking to remove your ability to balance all the priorities against available revenue -- all the priorities of the State of New Jersey.

It also allows this one purpose to become a super priority amongst all others -- to the detriment of what? -- to the detriment of other essential services, safety-net programs. Think about that: a super priority above all others.

Also, there is no clear evidence of how this funding will come to be, in years to come in the future. And I would suggest that it is your fiduciary responsibility to show the data of how we will fund this into the future. We have not seen any evidence of that, to date, and that's frightening,

And when the revenue is not there, what happens? What happens when that quarterly payment comes, you're handcuffed in terms of your ability to make a choice -- what's going to happen? What's going to

not get funded, what's going to not get funded, potentially? School aid, public safety, and health care.

But if you go the other way, and say, "Let's fill a revenue gap instead of cutting another program," who is that going to fall on? And I suggest to you, if history repeats itself in the State of New Jersey, first and foremost, it's New Jersey's small business, which is the foundation and the bedrock of New Jersey's economy.

Why do I say that? Because we, every year, are threatened with a millionaire's tax. And it's no surprise that a millionaire's tax was the first revenue discussed to fund ACR-3, in addition to CBT tax.

Now, rest assured, a tax on small business is a tax on New Jersey's middle class. Small businesses are people who file their tax returns and their personal returns, LLCs, and small partnerships. They will be the ones who will be affected the most and, again, they are the bedrock and foundation of New Jersey's economy.

And we know, from numbers that we have run, that that won't be enough. A millionaire's tax today and a CBT surcharge may not do it. And what does that mean? That means that a tax will be imposed upon all other residents of the State of New Jersey -- tax increases like we've not seen in decades.

Let me suggest that even just the discussion of ACR-3, alone, sent shock waves through the business community. Tony Russo mentioned this earlier, how his phone rang off the hook; as did ours. And I will suggest that, if this amendment is passed, it will have a chilling effect on business' investment at a time that they are just now rebounding -- just now rebounding from the recession.

I want to give a few examples of NJBIA's recent business outlook survey, and what we learned this year when we asked our members about their long-term prospects for the State of New Jersey. We asked them three particular questions about the future of them -- of their impact in the State of New Jersey, of what they'll do in the future. Two-thirds told us that if they were to open a new facility or add on (*sic*) to a facility -- open a new office tomorrow -- they would not do it in the State of New Jersey. Two-thirds of them told us they will not make New Jersey their domicile in retirement in the future. And two thirds told us that they take a State inheritance tax into consideration for their long-term business succession planning.

This is a huge red flag for us. Out-migration is real in the State of New Jersey. Over the last decade, we have lost \$18 billion of adjusted gross income in the State of New Jersey -- \$18 billion of adjusted gross income in the State of New Jersey. Think of what that money would help to do to our General Fund today.

We have that decade of evidence, on top of a red flag, looking forward for the next few years, of the business community telling us that they will not be here in the future. I suggest that, if you were to consider ACR-3, and if this amendment goes through, that will play out, and that's going to be devastating for the State of New Jersey.

Now, let me please suggest that we absolutely agree that we need a comprehensive solution to the pension challenge that we face today. We must live up to our obligation. But the process through which you're looking to do it is the wrong one. We need one where we sit together,

where we come up with good solutions; and a constitutional amendment is not the way to do that.

Thank you for your time this morning.

ASSEMBLYMAN McKEON: Thank you very much for your thoughtful testimony.

Seth Hahn, of CWA.

S E T H H A H N: Mr. Chairman and members of the Committee, thank you for holding this public hearing.

My name is Seth Hahn; I'm with the Communications Workers of America. We represent 70,000 families in New Jersey, including 55,000 public sector workers. We have members in both the State and local Public Employee Retiree System, the Teachers' Pension Annuity Fund, and the Police and Firemen's Retirement System.

There's a very simple reason the pension plans in New Jersey are in worse shape than in almost every state in the country. It's not because the pension is too generous. The average State worker represented by CWA will earn a pension of \$26,000 a year; and the average county or local government worker in the PERS plan will earn a pension of \$20,000 a year.

It's not because workers aren't paying enough. The members we represent in the PERS system pay almost 80 percent of the normal cost of their benefit. It's not because the plan hasn't been cut. Benefits have been cut four times in the past decade, and workers have paid more into the system in 6 of the past 10 years. In fact, workers in the PERS system in New Jersey now pay more than workers in every state in our region -- except

for Massachusetts -- to get a benefit that is less generous than every state in our region.

As we know, the reason that the pension plan is in the shape that it is, is because we didn't make payments. And after 15 years of partial or no payments, the Legislature, in 2010, said, "Enough is enough; it's time to get back on track to full payments."

And since then, the Legislature has acted responsibly every year since -- sometimes with the support of the Executive, and sometimes in spite of opposition from the Executive. Unfortunately, the New Jersey Supreme Court ruled against responsibility in Burgos, by ruling that the Legislature cannot enter into multi-year contracts in order to pay its bills. But in that same decision, the Court also said that benefits already earned have to be paid. And if we continue on our current track, and the funds run out of money, it will cost at least \$8 billion a year from the General Fund to make payments that the Supreme Court says people are already owed.

So this amendment doesn't create any new deficit, right? What this amendment does is say we have to deal with paying for that.

And also, the Supreme Court has said, therefore, that the Legislature cannot mandate a \$3 billion payment next year. But if we run out of money, the Legislature can mandate a payment that's three times as large.

So the Supreme Court has created a crisis that only the voters of New Jersey can resolve. The constitutional amendment is not the only responsible path forward; it's the only path forward.

There is complete agreement -- or near complete agreement that this is affordable. By moving to a phase-in of 10 years toward a full

payment, instead of only the 7-year phase-in originally in the law, there should be bipartisan agreement that the payments can be made without increasing taxes. The tenths schedule was unilaterally written into this year's budget by a Republican Governor. There was broad Republican support for a constitutional amendment to mandate payments in 2010; and Republican leaders in the Senate recently outlined a plan that includes revenue growth that will more than cover the annual increases in cost to make the pension payments. Combined with an identical proposal from Democratic leadership, there is no question that this proposal is one New Jersey can afford without raising any taxes.

By contrast, here are the alternatives. First, the State can continue to skip its payments and let the funds run out of money. If that happens, the funds, as I mentioned, will cost \$8 billion, maybe \$9 billion or \$10 billion a year out of the General Fund, to pay benefits already earned. The second option is that the funds go into bankruptcy and the retirement fund that 800,000 New Jersey families depend on is destroyed -- sending New Jersey's economy into a tailspin and revenues plummeting again. Either way, it's clear that anyone who cares about fiscal responsibility -- if you care about funding teachers, if you care about funding programs, safety-net programs -- the only responsible way is to get this pension payment under control.

Some have said that the Constitution is not the place where something like this belongs. I would say that paying our bills and living up to your obligations is exactly a bedrock principle that belongs in the New Jersey Constitution.

Paying workers what you've agreed to pay them after they've already done the work is fundamental to our economy. And it's not just a small minority. Teachers -- knowing that they can live on a modest retirement benefits every child in New Jersey; it benefits every community in New Jersey. If people working with the profoundly disabled know that they can have a decent retirement -- that benefits those families as well. People who work in parks -- knowing that they are going to have a middle-class lifestyle, benefits greenspaces that we all rely on.

But even if it were just one worker, and we had one worker in New Jersey who had done the work for 30 years, and then got to the end of that worker's career and was told that a benefit he or she was promised would not be there -- the Constitution should still be changed to protect that worker, because that's how our system works, and that's exactly how we should do business in New Jersey.

Speaking of those workers -- I'd like to close by reminding everyone that this is about the services provided by workers employed by our State, counties, towns, and communities. The workers CWA represents are some of the most dedicated people you will ever meet. They don't do this to get rich; they do this because they love the services they provide, and they actually take pride in providing services to their communities. They are social workers who go alone in the dark in neighborhoods where police go armed and in pairs; and they knock on doors and they say, "I need to make sure your kids are safe tonight." They work with the profoundly disabled to ensure all our citizens can lead a life with dignity and respect. They clean up hazardous waste sites; they work with troubled teens; they

make sure day cares are safe for our children; they provide medical care to veterans.

Some people can call them *pigs* for wanting to have a modest retirement benefit. I choose to call them *dedicated workers* who aren't thanked enough for doing the most difficult jobs in our communities, and who need the legislative leaders to make sure they don't have to live their senior years in the poor house.

On behalf of those workers, I thank you for holding this public hearing so that the amendment can move forward to the voters next fall.

Thank you, Mr. Chairman.

ASSEMBLYMAN McKEON: Thank you, Seth. I appreciate it.

Wendell Steinhauer of NJEA.

WENDELL STEINHAUER: Thank you, Mr. Chairman.

Wendell Steinhauer, President of the New Jersey Education Association, representing 200,000 active and retired public school employees.

Mr. Chairman, I want to compliment you, first, on running a great show here. It's moving along pretty nicely.

And you have my written testimony; I've testified before this group before. So I just want to punctuate a few points and move it along.

ASSEMBLYMAN McKEON: Thank you.

MR. STEINHAUER: For two decades, the State has consistently failed to fully fund its share of pension costs. Each missed payment increases the State's liability and the cost to taxpayers. Over that 20 years, the cost has gone from half-a-billion to, now, almost \$5 billion,

and -- I agree with my colleagues -- on the way to \$8 billion if things aren't changed.

Attempts to enforce responsible funding through legislation or legal action have been completely exhausted, and they haven't worked. So passing a constitutional amendment will close the loophole that allows the Governor and legislators to shirk their responsibilities.

This amendment will shrink the liability, and eventually eliminate it almost entirely, by forcing regular, responsible pension contributions. In fact, simply moving to the quarterly payments will save taxpayers \$12.9 billion. And every year the State fails to make responsible payment, that liability grows and taxpayers end up owing more.

So the large liability is a part of the reason for New Jersey's credit downgrades and high borrowing costs. And ignoring this problem doesn't make it go away; it only makes it worse.

So this solution reduces New Jersey's pension liabilities. Every year the State fails to fund the pensions, the cost goes up. And we cannot afford not to start funding pensions responsibly and regularly.

And let me tell you what this amendment won't do. It doesn't add to the amount that New Jersey owes; in fact, it decreases the amount by making responsible payments quarterly. It doesn't give anything new to public employees; it only requires the State to pay for the benefits they've already earned.

And finally, it doesn't require the State to make the whole annual payment right away. It allows the State to phase in payments over several years, making it much easier to reach a responsible level of funding.

Thank you for your time.

ASSEMBLYMAN McKEON: Thank you, Wendell.

ASSEMBLYWOMAN SCHEPISI: I do have one quick question.

ASSEMBLYMAN McKEON: Sure.

ASSEMBLYWOMAN SCHEPISI: Thank you.

In light of the comments that I'm sure you heard me bring up before, with respect to the casino gaming, if-- And you're here on behalf of a lot of your members; you guys lobbied very hard in the last election. I had members of your organization come to my legislative office and flat out say they didn't care if we had to raise taxes on every small business in the state, they wanted their pensions paid; which is understandable.

My question for you is, seeing a potential for additional real revenue that was coming into the state that could make up the shortfall on some of the pension obligations, right now, is there any reason why your organizations didn't lobby or take a look at the proposed gaming bills to, potentially, lobby to ensure that maybe there was flexibility to use some of that money to make the pension obligations, rather than just having to either cut programs, which would probably be educational programs, or to have to raise taxes on the rest of the people in New Jersey?

MR. STEINHAUER: It appears to me that the Assembly and Senate may be on two different tracks on those casino bills. And until it comes to full resolution, and passes the public hearings, and gets onto a ballot, our organization doesn't take a position on that. We have a process that we go through with that.

ASSEMBLYWOMAN SCHEPISI: But you do realize that once that's on the ballot, we will, as Legislators, be constitutionally prohibited from ever using one dollar of that extra revenue towards--

ASSEMBLYMAN McKEON: Excuse me; not once it's on the ballot -- once it's voted by the majority of the people in the state.

ASSEMBLYWOMAN SCHEPISI: Oh, but--

ASSEMBLYMAN McKEON: Once it's passed--

ASSEMBLYWOMAN SCHEPISI: Yes.

ASSEMBLYMAN McKEON: --by the voters. Okay.

ASSEMBLYWOMAN SCHEPISI: Of course. But once it's on the ballot, it can't be changed. And so it's too late for you guys to opine on it, or say anything about it.

So I just -- I find it odd, because it seems to be such an incongruent thing, where you've lobbied so aggressively and so hard for your members; but yet, here's a potential pool of money that could stabilize things -- and not a peep. So I would just ask you to take a look at it before it's too late.

MR. STEINHAUER: Thank you.

ASSEMBLYMAN McKEON: I'm just trying to understand the "too late." The NJEA, as I understand your response, would then meet in committee and determine if they were going to either support or oppose the constitutional amendment and, as they well can, campaign either for or against it.

MR. STEINHAUER: Correct.

ASSEMBLYMAN McKEON: Okay. Thank you.

MR. STEINHAUER: Thank you.

ASSEMBLYMAN McKEON: I have no other witnesses signed up on this particular -- let me get my number straight -- ACR-3. So seeing none, I'll allow my colleagues, as we've done, to make any substitutive comment before we gavel out that section.

ASSEMBLYMAN BROWN: I think it has all been said; thanks.

ASSEMBLYWOMAN SCHEPISI: And I am going to keep this real brief.

ASSEMBLYMAN McKEON: Take your time; whatever time you need, please.

ASSEMBLYWOMAN SCHEPISI: I just -- I think, right now, we're playing a dangerous game of financial Russian roulette. I think that everybody agrees that we should come up with a solution for this issue. I think that there are as many people on your side of the aisle as mine who have grave concerns about the implications if we constitutionally do this.

There is no provision in the bill, as drafted -- unless there was an amendment that I have not seen -- that would provide any flexibility, even in the event of some sort of financial, natural disaster that took place. So if we move this forward, as is, and we have another Hurricane Sandy-type of event, we've just destroyed the State of New Jersey. And we have no flexibility to do anything about it.

So I represent a district where we get nothing to begin with. So if we have to cut everything, it's really going to have no impact. Because I think, right now, between municipal aid and school aid, we're receiving about \$100 per person back from the State -- and sending down close to 30

percent of the State budget. So, you know, if we have to cut major programs, the people I represent are going to be okay.

But we're sitting here, we're talking about Atlantic City, we're talking about places in which they're not doing financially okay. And there are only so many people we can tax. I just don't understand how we can move forward without understanding where these pools of money are going to come from, and bind ourselves in a way that we can't get out of.

So I'd much prefer that we take the time, sit down, come up with a real bipartisan solution, and figure it out. But I just -- I think this is a very dangerous thing that we're doing.

ASSEMBLYMAN McKEON: Thank you very much, Assemblywoman.

Assemblyman? Any of my colleagues?

ASSEMBLYMAN JOHNSON: It's all been said, I think.

ASSEMBLYMAN CAPUTO: No, thank you.

ASSEMBLYMAN McKEON: Okay.

Me, I can't help myself, even though it's all been said. I just have a few thoughts.

One is, to which, we should come up with a real bipartisan solution. We did, in 2011. And what happened since that time, after significant concessions -- historic concessions were made by the unions, where individuals who were a part of that historic bipartisan deal crowed about how, "I can work with everyone; we can do this together," then proceeded, from 2011, forward-- And I think, learned counsel, your number was off by just \$1 billion -- \$17 billion short, as it related to our part of the deal, if you will, to fund those pensions over that period of time.

The paying-- You know, this isn't a liberal or conservative issue. I look to myself as somebody who is fiscally conservative. This is about paying systemic debt. This is about nine downgrades, all having to do with an underfunded pension system. This is about following the Governor's independent commission, as it related to pensions, to say that we have to guarantee and have a source of funding to pay down that systemic debt.

From a moral perspective, I just say this. And PS, to state that, "Oh, we have to cut all kinds of programs if we do this" -- the last two fiscal years' budgets were presented to this Governor that paid the full pension payment, but didn't cut one education or other program. It did include a revenue enhancer in the form of taxes on income of \$1 million -- or in excess of \$1 million.

I just -- from a moral perspective, I say this. One of the witnesses was talking about the 10 percent. We're going to do this for the 10 percent? Well, number one is that the 10 percent, for the most part, probably live with somebody who they might be married to or are partners with; they may have children. So it's more than 10 percent of the people of this state who rely on incomes to their households from pension.

And more importantly, if you have ever gone to a public school; if you have had-- The 90 percent, if you have ever gone to a public school; if you are a parent of somebody who goes to a public school; if you are the grandparent of somebody who goes to a public school; if there has ever been a fire in your community; if you have ever needed a police officer; if you have ever had a medical emergency; if you've needed a road plowed; or if someone in your family needed the supports of the various appendages of

State government that support those who aren't otherwise supported -- well, then, I guess that's the 90 percent. That's all of us who depend on that 10 percent to do all those things.

So with that, I've said my piece -- we'll see as this goes through the process as to what, ultimately, the people of the state will say on this issue, if it goes to the ballot.

And I'm sorry -- I have to say one other thing, because I am going to be very frank with the unions. You made concessions; we made a promise. We broke that promise. This time, if the people decide to do so, we will have no choice but to make those full pensions. But know that we are going to expect for you to partner with us; to know that, at that point, there will be probably additional concessions that will need to be made so we can keep and put our house in the fiscal order that means something to each and every one of us. And I know you'll partner with us, then, just like you did in 2011 to make that happen.

I am going to ask for -- because I'm old and need a comfort break. It is 1:32.

First of all, I'm going to gavel the ACR-3 public hearing to a close.

(HEARING CONCLUDED)

APPENDIX



What's Good For Business.

Headquarters: 61 South Paramus Road • Mack-Cali Centre IV • Paramus, New Jersey 07652
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Memorandum

To: Members of the Assembly Judiciary Committee

From:  Anthony Russo, EVP - Government Affairs & Communications
Commerce and Industry Association of New Jersey

Date: January 7, 2016

Subject: ACR #3 (Pension Payment Ballot Question)

Good morning Chairman McKeon and members of the committee. My name is Anthony Russo. I am the Executive Vice President of Government Affairs and Communications for the Commerce and Industry Association of New Jersey (CIANJ). The CIANJ is a statewide business advocacy group, with offices in Paramus and Trenton, representing more than 900 members from virtually every business sector (manufacturing, hospitality, financial, insurance, academia, healthcare, etc.).

CIANJ is opposed to ACR #3 because we believe this approach to funding our pension system will have deleterious effects on New Jersey's economy in years to come and will force future governors and members of the legislature to cut spending to critical programs and/or raise taxes should revenues fall short. Amending our State Constitution to mandate annual pension payments, regardless of economic conditions, is a recipe for disaster and will only deter private investment from coming to New Jersey. It will create a fiscal cliff that will be unavoidable. This is unacceptable and bad public policy for New Jersey.

No one argues the importance of keeping our pension system solvent and viable but this approach is not the solution. These are complex matters requiring complex solutions. We should not circumvent the debate and dialogue that is so important each year when budgets discussions begin. It is through this debate and dialogue that compromise is reached and balanced budgets passed.

Furthermore, we must recognize that in its current form, our pension system is not sustainable. Further reforms are needed. By some accounts, our unfunded liabilities exceed \$80 billion. The numbers are staggering and will likely increase in the years ahead. No one can predict with any confidence what will happen with our economy but what we cannot do is further burden our citizens and businesses with new taxes. By mandating these payments, regardless of what the exposure may be, is not sound fiscal policy.

Lastly, when so many voters are disengaged and apathetic to politics, as evidenced by the historic low voter turnout in recent elections, is the use of the ballot box the right approach to govern? When only 20% of New Jersey's estimated 5 million voters actually vote, are we really reaching a consensus of the people? Until voters are engaged, we should be weary of using ballot questions as a means of governing.

We urge you to vote no on ACR #3. I can be reached at arusso@cianj.org or 908-415-4597 with any questions. Thank you for the opportunity to comment.

New Jersey's business advocate for over 87 years

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Testimony of Barbara Eames
Whippany NJ - January 7, 2016
On ACR1 ACR2 ACR3 ACR4

The elected representatives of the majority party of the NJ Legislature are about to embark on an historic undertaking to "fundamentally change" the NJ State Constitution, with four amendments.

IF the People of the State of NJ were aware and understood the assaults upon not only the State Constitution, but upon the principle of Constitutional separation of powers, and ultimately, their liberty, and freedom from oppressive government that will be a result of these ill-advised amendments, they would be filling these chambers today. Most people, however, have little knowledge about today's deliberations, are consumed with the daily responsibilities of families and jobs, and might even acknowledge the futility of testifying today.

Their absence does NOT, however, justify the damage to representative government, the perversion of the public trust, and the triumph of partisan politics over that trust that are the intention of today's deliberations. As Mark Twain famously stated, "No man's life, liberty, or property are safe while the legislature is in session."

A former US President, with more wisdom and moral compass than many of his peers either then or now, wrote this many years ago:

"All obstructions to the execution of the Laws, all combinations and Associations, under whatever plausible character, with the real design to direct, control, counteract, or awe the regular deliberation and action of the Constituted authorities, are destructive of this fundamental principle (of liberty) and of fatal tendency.

They serve to organize faction, to give it an artificial and extraordinary force; to put in the place of the delegated will of the nation, the will of a party; often a small but artful and enterprising minority of the Community; and, according to the alternate triumphs of different parties, to make the public administration the Mirror of the ill-concerted and incongruous projects of faction, rather than the organ of consistent and wholesome plans digested by common councils and modified by mutual interests.

However combinations or Associations of the above description may now and then answer popular ends, they are likely, in the course of time and things, to become potent engines, by which cunning, ambitious and unprincipled men will be enabled to subvert the Power of the People, and to usurp for themselves the reins of Government; destroying afterwards the very engines which have lifted them to unjust dominion."

It seems that George Washington must have been speaking of this NJ legislature.

The gas tax and pension amendments seek to institutionalize both revenues and expenditures outside of the annual appropriations process, by removing that annual Constitutional responsibility from the legislature, and placing it in the Constitution. The two Amendments on redistricting and Pensions represent nothing more than a blatant attempt to consolidate the power of the majority party among special interests and in certain geographies. It is a shameless manipulation of the Public Will for the personal benefit of politicians who seek to ensure either the dominance of a political party in NJ, or their own election.

The Amendments will also contribute to a deterioration of the terrible fiscal condition of the State, which already has the highest exit rate in the nation.

The legislature will hide behind the excuse that they are giving "The People" the right to decide these issues. The complicated questions will be worded in such a way as to make them seem simple, reasonable and even necessary. The result will be that the people will unwittingly be manipulated for the benefit of the majority faction that placed the questions on the ballot.

In closing, Washington spoke about **"the preservation of your government"** and warned **"that you resist with care the spirit of innovation upon its principles however specious the pretexts."** He continued, **"One method of assault may be to effect, in the forms of the Constitution, alterations which will impair the energy of the system, and thus to undermine what cannot be directly overthrown."**

So manipulation of the system, by pandering to constituencies for political benefit, betrays the sacred trust placed in elected officials, and undermines the integrity of the governmental system. The legislature MAY have the ability to pass four amendments to the Constitution, but that does NOT mean it has the moral authority to do so. Vote "NO" on these amendments.

I thank you for your time.

Jennifer Reppert

Delran

January 7, 2016

The foundation of the nation and its states is built on the fact that instituted government derives its powers from the consent of the people.

Our founders were very concerned with the creation of political parties. They feared this would create a deep threat to the health of the nation. A small but crafty special interest minority would put in place the will of a party over the will of the people.

This brings me to the 4 amendments that are being discussed today. All 4 appear to be created for the benefit of a particular party and their own interests above that of the New Jersey citizen. At first glance, a person who reads it would think perhaps they are good ideas. I guess that is the point, but in reality they are anything but good ideas for the citizens that this legislation represents.

ACR 1 Although at first glance it looks like it is a good thing, gas taxes going to the transportation fund to build and fix roads and other infrastructure (I thought this was already supposed to be happening). However, it avoids to mention the separate intent to raise this tax by 25 cents (which everyone opposes). Creating an amendment to make sure this gas tax gets into the transportation fund is a way to gain favor with the construction unions. If their members are working and feel like work is good and the politicians are favoring them, they are more likely to go out and knock on doors for the interested candidate. More importantly, cast a vote for him or her. Lastly, details of annual budget management should not be in the Constitution. There needs to be flexibility to adjust to the ebbs and flows of the economy.

ACR2 I realize that casino authorization is a constitution item. However, this proposal is manipulative and calculating to meet political ends. It also doesn't consider the negative impact on Atlantic City.

ACR3 Mandate that state revenues fully fund all pension funds. Once again, financial management details don't belong in the Constitution. The state can't pay these benefits. They are not in a good financial position. Legislators who want to get re-elected will once again kick the can down the road without addressing the problem. More of the same that put us in the financial situation we are in. Sadly, this will affect innocent young citizens, all of our children and grandchildren.

ACR4 This admendment is probably the worst for the citizens and the republic.

1. Has immense impact on who gets elected. Definitely favors one party.
2. The citizen is completely shut out of the process.
3. Gives feeling of bias.
4. Having the Chief Justice of the NJ Supreme Court as the tie breaker is a complete and utter breach of the jurisdiction of authority. The court's whole reason to exist is to act independently and to evaluate constitutional issues and laws that were created by the legislation-which were elected by the people to represent the people. They should not be involved in party manipulation.

Thank you for your time.

WENDELL STEINHAUER, NJEA PRESIDENT
TESTIMONY BEFORE THE ASSEMBLY JUDICIARY COMMITTEE
ACR-3 CONSTITUTIONAL AMENDMENT
Thursday, January 7, 2016

Good morning. I am Wendell Steinhauer, President of NJEA. I am here on behalf of more than 200,000 active and retired school employees who have contributed to the public pension systems in every paycheck and now need this constitutional amendment to make the state keep its promise and stop shorting its obligation to state pension systems.

This should not be a controversial issue.

In 2011, Gov. Christie signed a law known as Ch. 78. It mandated the same funding requirement contained in this amendment.

In 2014 and 2015, the New Jersey State Legislature passed budgets that honored the fiscally responsible pension funding schedule set out in that law.

So the principle that the state must meet its pension funding obligations by making regular payments, determined by actuaries, is anything but revolutionary. It's a responsible and common sense approach.

Unfortunately, the New Jersey Supreme Court ruled last June that while pension funding is necessary, the Constitution as it currently exists contains a loophole that allows the state to shirk its responsibilities and kick the problem down the road, where future taxpayers will have to pay for it at a much greater cost.

And because of that loophole, that's what's happened for the last three years.

Gov. Christie has chosen to ignore both the law he signed and the will of the Legislature. As a result, New Jersey has been punished with repeated credit downgrades while our pension system plunged further and further into crisis.

It's been devastating to members of the pension system, to taxpayers, and to our state's economy.

The amendment before you is designed to guarantee discipline, so New Jersey can do what we all agree is necessary. This amendment provides the legal framework to compel governors and legislatures, now and in the future, finally to obey the 2011 pension funding law.

The amendment is also fiscally responsible. It does not add a single cent to the state's pension liability. In fact, it would quickly begin to reduce that liability, providing real relief to taxpayers concerned about the fiscal future of our state.

The numbers are impressive. Simply by moving to quarterly pension payments, without increasing its contribution at all, the state will save nearly \$13 billion over the next 30 years.

How can quarterly payments do that? They do it by generating \$8.5 billion in additional investment income from the same contributions, while cutting the unfunded liability by \$4.9 billion.

And that's just by making the exact same contributions but not waiting until the very last minute each year to do it.

It's an easy and obvious solution. We need this amendment.

The required funding schedule won't be easy. We're past easy solutions. But, it will work. And we can do it if we set our priorities straight.

Every year since Ch. 78 became law, this Legislature has passed a balanced budget with the full required payment -- so it can be done. Now, we just need the Constitution to help lawmakers achieve what most of them -- and most New Jersey residents -- agree is the fair and responsible thing to do.

And it's not just right fiscally, it's right morally.

Public employees have done their part. They've never missed a pension payment. They've never waited until the end of the year and then decided not to pay.

And since Ch. 78, they have done much, much more than ever before. Their pension contributions have gone from 5.5 percent of salary to over 7 percent, and that number is still climbing.

7x

For that, they have seen their COLA stripped away, and new employees are earning greatly reduced benefits.

And all of that is on top of new health care premium contributions mandated in Ch. 78 that can run many thousands of dollars for families struggling to get by. I have members across the state who have seen their take-home pay decrease each year since that law was passed.

With this amendment, my members aren't asking for any new benefit. They aren't asking for any special treatment. They're just asking the state to keep the promise it's made and pay them the pensions they've earned.

This amendment is nothing radical or revolutionary. It's simply about following the law. It's about fiscal responsibility. It's about fair treatment of the men and women who have done their part to stabilize the pension system and who just want the state to do what it agreed it would do.

- It's time to follow the law.
- It's time to be fiscally responsible.
- It's time to bring this issue to the voters.

We ask lawmakers and voters alike to work with us to pass this constitutional amendment.

Thank you.

/cam

8x



**NJPSA Testimony on ACR-3/SCR- 184 (Prieto/Sweeney, Turner)
Before the Assembly Judiciary Committee
January 7, 2016**

Thank you for the opportunity to express the **strong support** of the over 8,000 active and retired members of the NJ Principals and Supervisors Association for ACR-3/SCR-184, legislation addressing the State's legal, moral and fiscal obligations to fund public employee pensions in New Jersey.

Our members are career public employees who have dedicated their professional lives to leading our public schools and educating the students of New Jersey. They are also members of the Teachers' Pension and Annuity Fund (TPAF). They have earned their pensions and made their required pension contributions on time and in full throughout their professional careers.

Today, we are here to add our voice of support, along with our colleagues throughout the public sector, to a solid, long-term solution to the chronic underfunding, and in some fiscal years, the total lack of state funding of public employee pensions, across the past two decades. Despite significant reforms on the elements of the public pensions systems available to current and future employees, the State of New Jersey has consistently failed to meet its fiscal obligations to support public employee pensions. Public employees have exclusively borne the burden of pension reform through increases in retirement age and employee pension contribution rates, restrictions on enrollment eligibility, limitations on the pensionability of critical income (social security wage cap), the loss of cost of living adjustments, and the development of a five tiered retirement system. Yet, we continue to work hard to provide services to the public in hopes that our commitment will result in a secure retirement even when the State, including the New Jersey Supreme Court, has let us down.

Today, we thank Assembly Speaker Prieto, Senate President Sweeney, Senator Turner and the members of this committee for your collective leadership in ending this dysfunctional cycle. We applaud your efforts to protect the interests of both public sector employees and New Jersey taxpayers alike. ACR3/SCR-184 recognizes that public employee pensions are a form of deferred compensation for services rendered and that the State must honor its obligations under law.

It establishes, through a constitutional amendment with voter approval, a return to a phased- in payment schedule which balances public employee pension obligations with other critical state needs. Significantly, the legislation also makes this payment schedule enforceable in our courts. Further, the legislation promotes growth in the investment arm of public pension funding, through a system of quarterly payments on an annual basis, which will lead to a deeper pool for investments returns and ultimately savings to state taxpayers. Most importantly, it firmly and responsibly addresses a major fiscal obligation of the state which will lead to future fiscal stability, positive credit ratings and the avoidance of a future shifting of this financial burden to our children.

For these reasons, the NJ Principals and Supervisors Association urges this Committee to support ACR-3/SCR-184 today. Thank you for your support of our members and all of the hardworking public employees in New Jersey.

-----Original Message-----

From: jeanpublic1@yahoo.com [mailto:jeanpublic1@yahoo.com]

Sent: Mon 12/28/2015 10:36 AM

To: OLSaideAJU

Subject: vote no on acr 3

th epensions to govt employees are outrageous. nobody in private industry gets pensions anymore. the failure of the legislature to stop these outrageous pension payments for govt workers shows an inability to control corrption. nobody shoudl be getting a pension in govt anymore. and this does not need to be made a constitutional amendment. shut down all pensions now. that is what the nj public demands. the exorbitant taxes that are requied by these pensions costs iwll send all of nj into an economic tailspln. we need a way out of paying these exorbitatna corrupt pensions only for govt workers that nobody gets in private industry anymore. jean publiee jeanpublic1@yahoo.com

-----Original Message-----

From: jeanpublic1@yahoo.com [mailto:jeanpublic1@yahoo.com]

Sent: Wed 1/6/2016 9:29 AM

To: OLSaidèAJU

Subject: vote no on acr1,2,3,4

i oppose all 4 bills. they are not good for nj. will raise taxes and bring nj in the wrong direction. we need more accountability on spending our tax dollars and we need to downsize govt. we need to insist on knowing where our tax dollars go since they are spent unwisely with millions of dollars paid per mile of road that is 15 times larger than any other state pays, even those right next door to nj. its time to cut the overspending. its time to insist that state and municipal employees work an eight hour day and benefits are cut and pensions stop altogether. the costs are too high for taxpayers in this state. all 4 bills are bad for nj. jean public fleminington nj