

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,  
IN AND FOR LEON COUNTY, FLORIDA

GEORGE WILLIAMS, MEGAN ALLEN,  
KEVIN DOYLE, LORI GOODWIN,  
ADAM TEICHNER, BRIAN ENGLAND,  
MARTHA BAKER, MAGALIE VANCOL PENA,  
ROLANDO TABARES, ALLEN JONES,  
and JUAN BASO, individually and  
on behalf of all other individuals similarly situated,

CLASS REPRESENTATION

Plaintiffs,

vs.

CASE NO.:

2011CA1584  
Judge Jackie Fultford

RICK SCOTT, JEFF ATWATER, and  
PAM BONDI, in their capacities as  
the STATE BOARD OF ADMINISTRATION,  
JEFF ATWATER, as Chief Financial Officer  
of Florida, and JOHN P. MILES, Secretary  
of the Department of Management Services and  
Administrator of the Florida Retirement  
System,

Defendants.

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CLERK OF CIRCUIT COURT  
LEON COUNTY, FLORIDA

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COMPLAINT

Plaintiffs, GEORGE WILLIAMS, MEGAN ALLEN, KEVIN DOYLE, LORI GOODWIN, ADAM TEICHNER, BRIAN ENGLAND, MARTHA BAKER, MAGALIE VANCOL PENA, ROLANDO TABARES, ALLEN JONES, and JUAN BOSO, individually and on behalf of all others similarly situated, bring this action for declaratory, injunctive, and other relief pursuant to Chapters 26 and 86, Florida Statutes, asking the Court to declare unconstitutional and temporarily and permanently enjoin implementation of certain proposed changes to the Florida Retirement System in Chapter 2011-68, Laws of Florida:

1. Plaintiffs challenge the provisions of Chapter 2011-68, Laws of Florida, that mandate deduction of three percent (3%) of the gross compensation of active participants in the

Florida Retirement System to serve as “contributions” toward the retirement benefits which they are entitled to receive under the Florida Retirement System. *See* Ch. 2011-68, §§ 5, 7, 11, 13, 24, 26, 29, 33, 40, Laws of Fla. These provisions violate the Florida Constitution as applied to employees who were participants in the Florida Retirement System prior to July 1, 2011, in that they substantially impair these employees’ contract with the State of Florida for a noncontributory retirement plan, constitute a taking of private property without full compensation, and impair Plaintiffs’ right to collectively bargain.

2. Plaintiffs also challenge the provisions of Chapter 2011-68, Laws of Florida, that reduce the cost-of-living adjustment for those retiring after July 1, 2011, by the proportion of service credit the retiree earns after July 1, 2011. *See* Ch. 2011-68, § 17, Laws of Fla. This reduction violates the Florida Constitution as applied to employees who were participants in the Florida Retirement System prior to July 1, 2011, because they substantially impair these employees’ contract with the State of Florida for a 3% cost-of-living adjustment throughout retirement regardless of years of service or the dates of service, constitute a taking of private property without full compensation, and impair Plaintiffs’ right to collectively bargain.

### **JURISDICTION AND VENUE**

3. The Court has subject matter jurisdiction over this action pursuant to Article V, Section 5(b), Florida Constitution, Sections 26.012 and 86.011, Florida Statutes, and Rules 1.220 and 1.610, Florida Rules of Civil Procedure.

4. Venue is proper in Leon County, Florida, pursuant to Section 47.011, Florida Statutes, because the Defendants each have their official headquarters in Leon County.

## PARTIES

### Plaintiffs

5. Plaintiff GEORGE WILLIAMS is the head custodian for the Madison County District Schools. Plaintiff Williams has been a member of the Florida Retirement System Pension Plan since 1982. He is a member of the Madison County Education Association.

6. Plaintiff MEGAN ALLEN is a teacher of exceptional student education at Cleveland Elementary School in Hillsborough County, Florida. Plaintiff Allen has been a member of the Florida Retirement System Investment Plan since 2005. She is a member of the Hillsborough Classroom Teachers Association.

7. Plaintiff KEVIN DOYLE is a social studies teacher at Fort White High School in Columbia County, Florida. Plaintiff Doyle has been a member of the Florida Retirement System Investment Plan since 2001. He is President of the Columbia Teachers Association.

8. Plaintiff LORI GOODWIN is a deputy with the Santa Rosa County Sheriff's Office. Plaintiff Goodwin has been a member of the Florida Retirement System Pension Plan since 2003. She is a member of the Fraternal Order of Police Santa Rosa Lodge 123.

9. Plaintiff ADAM TEICHNER is a deputy with the Santa Rosa County Sheriff's Office. Plaintiff Teichner has been a member of the Florida Retirement System Pension Plan since 2001. He is the President of the Fraternal Order of Police Santa Rosa Lodge 123.

10. Plaintiff BRIAN ENGLAND is the Coordinator of Continuing Education at Hillsborough Community College. He was a member of FRS from 1986 through 1995 and from 2008 to the present. He is a member of the SEIU-Florida Public Service Union.

11. Plaintiff MARTHA BAKER, RN, is a nurse manager at Jackson Health System in Miami-Dade County. She has been a member of the Florida Retirement System Pension Plan since 1984. She is President of SEIU Healthcare Florida, Local 1991.

12. Plaintiff MAGALIE VANCOL PENA is a social worker at Jackson Health System in Miami-Dade County. She has been a member of the Florida Retirement System Pension Plan since 1989. She is member of the Executive Board of SEIU Healthcare Florida, Local 1991.

13. Plaintiff ROLANDO TABARES is a clinical social worker at Jackson Health System in Miami-Dade County. He has been a member of the Florida Retirement System for 13 years (non-continuous). He is a member of the SEIU Healthcare Florida, Local 1991.

14. Plaintiff ALLEN JONES is an AC Assistant with the Leon County Schools Maintenance Department. He has been a member of the Florida Retirement System Pension Plan since 1989. He is a member of the International Union of Painters and Allied Trades, District Council 78, Local 1010, and represents the Florida AFL-CIO.

15. Plaintiff JUAN BASO is an Equipment Operator 3 with the Solid Waste Department of Hillsborough County. He has been a member of the Florida Retirement System since 2005. He is a member of AFSCME Local 167.

#### **Defendants**

16. The state officials designated to administer and enforce the provisions challenged in this lawsuit are RICK SCOTT, JEFF ATWATER, and PAM BONDI, as the STATE BOARD OF ADMINISTRATION, JEFF ATWATER, as Chief Financial Officer of the State of Florida, and JOHN P. MILES, Secretary of the Department of Management Services.

17. The STATE BOARD OF ADMINISTRATION ("SBA") is responsible for investing and reinvesting the funds deposited in the Florida Retirement System Trust Fund, pursuant to section 121.151 and 215.44, Florida Statutes.

18. Defendant RICK SCOTT is Governor of the State of Florida and chair of the STATE BOARD OF ADMINISTRATION. He is sued in his official capacity.

19. Defendant JEFF ATWATER is the Chief Financial Officer ("CFO") of the State of Florida and a member of the STATE BOARD OF ADMINISTRATION. He is sued in his official capacity.

20. Defendant PAM BONDI is the Attorney General of State of Florida and a member of the STATE BOARD OF ADMINISTRATION. She is sued in her official capacity.

21. Defendant JEFF ATWATER, CFO, pursuant to Article IV, Section 4 of the Florida Constitution, is the chief fiscal officer of the state and is responsible for settling and approving accounts against the state, and keeping all state funds and securities. CFO Atwater is sued in his official capacity.

22. Defendant JOHN P. MILES, is the Secretary of the Department of Management Services. Pursuant to section 121.025, Florida Statutes, Secretary Miles is the administrator of the retirement and pension systems assigned to the Department of Management Services by law. Secretary Miles is sued in his official capacity.

#### **CLASS REPRESENTATION ALLEGATIONS**

23. Plaintiffs bring this case as a class action pursuant to Rule 1.220(b)(2) of the Florida Rules of Civil Procedure on behalf of themselves and a class consisting of all public employees in Florida who were members of the Florida Retirement System (FRS) prior to July 1, 2011, and who will be subject to the provisions of Chapter 2011-68, Laws of Florida, effective July 1, 2011, mandating a 3% deduction of their gross compensation toward the cost of their FRS retirement benefits and the reduction of the cost-of-living adjustment throughout retirement for service performed after July 1, 2011 (the "Class").

24. The Plaintiffs' claims involve questions of law and fact that are common to each member of the Class. Among the questions of law and fact common to Plaintiffs and the members of the Class are:

a. Whether the actions of the Defendants in taking 3% of the gross compensation of Plaintiffs and members of the Class to fund the FRS impair their contractual entitlement to the retirement plan which has been promised to them, in violation of Article I, Section 10 of the Florida Constitution;

b. Whether the Defendants have the legal right and authority to take the property of Plaintiffs and members of the Class, by extracting 3% of their gross compensation to eliminate a general budget deficit, without providing full compensation for such taking;

c. Whether the Defendants have the legal right and authority to alter the terms of the cost of living adjustment provisions of the contractual retirement benefits accorded to members of the Class; and

d. Whether the Plaintiffs and members of the Class are entitled to injunctive relief prohibiting the unilateral extraction of 3% of their salaries to be used by the State to eliminate a general budget deficit and prohibiting the unilateral modification of the contractual terms of pension benefits, including, without limitation, alteration of the cost of living benefits to which members of the Class are entitled.

25. The Plaintiffs' claims are typical of the claims of the members of the Class because the Plaintiffs and members of the Class are all subject to the unilateral alteration of their contractual entitlement to pension benefits and the Defendants' illegal and unauthorized use of such funds to eliminate a general budget deficit. The Plaintiffs and the members of the Class will all sustain similar damages as a result of the actions of the Defendants.

26. The approximate number of Class members (as defined in paragraph 23 of this Complaint) is 556,296. The Plaintiffs will fairly and adequately protect and represent the interests of the members of the Class because Plaintiffs' interests are fully aligned with the interests of the Class members. The Plaintiffs have retained counsel sufficiently experienced in

the litigation of claims such as in this action and who have no conflict of interest with other Class members in the maintenance of this Class action. The Plaintiffs will vigorously pursue the claims of the Class.

27. The particular facts and circumstances that support maintenance of this action as a class action pursuant to Rule 1.220(b)(2) of the Florida Rules of Civil Procedure are:

a. The Defendants have acted on grounds which are generally applicable to the Class, in that they intend to implement Chapter 2011-68, Laws of Florida, in a uniform manner with respect to all members of the Class.

b. The Plaintiffs and members of the Class are entitled to injunctive relief to sequester, during the duration of this litigation, the funds being deducted from their salaries and to pay such funds and accrued interest back to them at such time as they prevail in this action. Specifically, and without limitation, the Plaintiffs and members of the Class are entitled to repayment of the money exacted from them, including interest, as a result of passage of Chapter 2011-68, Laws of Florida. Further, Plaintiffs and the Class are entitled to have the Defendants enjoined from unlawfully taking a portion of their salaries as retirement contributions in the future.

c. The monies sought to be sequestered and paid back to members of the Class may be calculated from the official records of the Defendants reflecting the amounts of money withheld from the gross compensation of individual members of the Class, plus interest. Accordingly, the cost of administering the recovery of funds on behalf of individual members of the Class will be minimized.

## BACKGROUND

28. Prior to 1970, multiple public retirement systems existed in Florida with different membership criteria and benefit schedules.

29. In 1970, the Florida Retirement System ("FRS") was created by combining most of the existing public retirement systems.

30. Membership in the FRS was mandatory for all officers and employees employed on or after December 1, 1970.

31. Initially, FRS was created as a contributory system in which regular members contributed 4% of their gross compensation toward their FRS retirement and special risk members contributed 6%. Employers contributed an amount equal to the employee contribution.

32. At the time FRS was created, case law in Florida held that participants in noncontributory public retirement systems held no vested rights to benefits under those systems and the terms could be changed by the employer at any time.

33. In 1974, the Florida Legislature converted FRS to a noncontributory system, eliminating the required member contributions and increasing the employer contributions to 9% for regular members and 13% for special risk members. These changes were effective January 1, 1975.

34. The primary reason the Florida Legislature converted FRS to a noncontributory system was to help eliminate the unfunded liability documented in actuarial studies. Because employer contributions are not refundable, a noncontributory system is not required to refund contributions to terminating employees. Reduction of this outflow was expected to help stabilize the FRS.

35. As part of the 1974 Act approving this change, the Florida Legislature adopted the following amendment to FRS, entitled "PRESERVATION OF RIGHTS":

The rights of members of the retirement system established by this chapter shall not be impaired by virtue of the conversion of the Florida Retirement System to an employee noncontributory system. As of [July 1, 1974], the rights of members of the retirement system established by this chapter are declared to be of a contractual nature, entered into between the member and the state, and such rights shall be legally enforceable as valid contract rights and shall not be abridged in any way.

Ch. 74-302, § 1, Laws of Fla. (1974), *codified at* § 121.011(3)(d), Florida Statutes.

36. In 1976, Florida voters adopted Article X, Section 14 of the Florida Constitution, which states:

A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

37. The Legislature subsequently stated its intent with respect to the implementation of this constitutional provision:

It is the intent of the Legislature in implementing the provisions of s. 14, Art. X of the State Constitution, relating to governmental retirement systems, that such retirement systems or plans be managed, administered, operated, and funded in such a manner as to maximize the protection of public employee retirement benefits.

§ 112.61, Florida Statutes.

### **THE CURRENT FLORIDA RETIREMENT SYSTEM**

38. Today, the FRS is a consolidated retirement plan which holds and administers retirement moneys for more than 900 state and local government employers in Florida, covering approximately 655,000 current members (including both active and terminated vested members) and providing benefits to approximately 304,000 retired members.

39. Participation in the FRS is compulsory for all employees (with limited exceptions) employed by employers that participate in the FRS.

40. FRS has remained a non-contributory plan since 1975. Members are neither required nor permitted to contribute to their retirement funds in FRS.

41. The FRS "Pension Plan"<sup>1</sup> is a defined benefit plan which entitles members to an annuitized monthly retirement income based upon a formula consisting of the member's average final compensation, employment class, and years of creditable service. Members fully vest in Pension Plan benefits upon six (6) years of service.

42. The Pension Plan provides retirees an annual cost-of-living adjustment of three percent (3%) irrespective of the number of years of credited service or when those years of service were performed.

43. The FRS "Investment Plan"<sup>2</sup> is a defined contribution plan which entitles members to their employers' monthly contributions to the FRS as a percentage of the member's monthly salary and to earnings on those contributions, but it does not assure a guaranteed result. Members fully vest in the Investment Plan benefits upon one (1) year of service.

44. Employees eligible to participate in FRS are enrolled by default in the FRS Pension Plan but may choose to participate in the "FRS Investment Plan" within five (5) months of their hire.

45. After their initial election, FRS members can choose to move between the Pension Plan and Investment Plan one time during their active service.

46. FRS benefit payments are administered by the Department of Management Services through the Division of Retirement.

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<sup>1</sup> Previously referred to as the "defined benefit retirement program," Senate Bill 2100 changes the name of this plan to the "Florida Retirement System Pension Plan." Ch. 2011-68, § 5, at 8, Laws of Fla. This complaint uses the term "Pension Plan" for ease of reference.

<sup>2</sup> Previously entitled the "Public Employee Optional Retirement Program," Senate Bill 2100 changes the name of this plan to the "Florida Retirement System Investment Plan." Ch. 2011-68, § 26, at 63, Laws of Fla. This complaint uses the term "Investment Plan" for ease of reference.

47. FRS employers are required to contribute a percentage of their employees' monthly compensation to the Division of Retirement for distribution to the Florida Retirement System Contributions Clearing Trust Fund.

48. The employer contribution rate is set annually by statute. It is to be based upon an actuarial determination of the level of funding necessary to support the benefit obligations under both FRS plans. The employer contribution rate is a blended rate of the contribution percentage for members of the Pension Plan and members of the Investment Plan.

49. For the fiscal year 2010-2011, the required employer contribution rate for each membership class is as follows:

Regular	9.63 %
Special Risk	22.11 %
Special Risk Administrative Support	12.10 %
Legislators, Governor, Cabinet	15.20 %
State Attorneys, Public Defenders	
Justices and Judges	20.65 %
County Elected Officers	17.50 %
Senior Management Services	13.43 %

50. FRS funds are managed by the State Board of Administration.

51. A funding ratio is a comparison of a pension's assets to its liabilities. Most experts recommend that public pension funds operate at or above an 80% funding ratio.

52. As of July 1, 2010, the FRS Pension Plan was funded at 87.9%.

53. According to the SBA, the FRS Pension Plan "has been and continues to be one of the most well-funded and healthiest public pension funds in the United States" and is "generally characterized as being in the top four by most objective publications."

54. According to the SBA, "Participants' benefits from the FRS Pension Plan are secure as those benefits are guaranteed by law."

## SENATE BILL 2100

55. During the 2011 legislative session, the Florida Legislature passed Senate Bill 2100, "An act relating to retirement." The Governor signed Senate Bill 2100 on May 26, 2011. The provisions challenged in this lawsuit are scheduled to take effect July 1, 2011.

56. Senate Bill 2100 makes a number of significant changes to the FRS which do not affect current members but only affect participants enrolling in the FRS after July 1, 2011.

These changes include:

- a. increasing the number of final years of compensation upon which retirement benefits are calculated from five (5) years to eight (8) years;
- b. increasing the years required for vesting in the Pension Plan from six (6) to eight (8) years;
- c. for most classes of service, increasing the retirement age from 62 to 65 and increasing the required years of service from 30 to 33 years; and
- d. for special risk employees, increasing the retirement age from 55 to 60 and increasing the required years of service from 25 to 30 years.

57. Senate Bill 2100 makes two significant changes to the FRS which significantly and unconstitutionally affect the Class members: a mandatory 3% pay deduction and a reduction in a retiree's cost-of-living adjustment for service performed after July 1, 2011.

58. Senate Bill 2100 converts the Florida Retirement System from a "noncontributory" to a "contributory" plan in which three percent (3%) of each active member's gross compensation is deducted monthly and submitted to the Division of Retirement to serve as a "contribution" to the employee's account with FRS:

Beginning July 1, 2011, each employee shall contribute [3%]. The employer shall deduct the contribution from the employee's monthly salary, and the contribution shall be submitted to the

division. . . . Such contributions are mandatory and each employee is considered to have consented to payroll deductions.

Ch. 2011-68, § 33, Laws of Fla. (2011).

59. Senate Bill 2100 also reduces the annual cost-of-living adjustment for Class members whose effective retirement date is on or after July 1, 2011. Whereas FRS currently provides Pension Plan retirees a 3% annual cost-of-living adjustment regardless of the years of service or dates of service, this annual adjustment will be reduced by the proportion of service the retiree performed after July 1, 2011. Ch. 2011-68, § 17, Laws of Fla. (2011).

60. For example, a member who retires effective July 1, 2012, with 30 years of service (29 of which occurred before July 1, 2011), the member's annual cost-of-living adjustment upon retirement will be calculated as follows:

$$29 \div 30 = .9667 \times 3\% = 2.9\%$$

Instead of receiving a 3% cost-of-living adjustment, this member will receive a 2.9% cost-of-living adjustment annually for the duration of his retirement.

61. Senate Bill 2100 does not provide any increased or improved retirement benefits under FRS.

62. Senate Bill 2100 sets the 2011-2012 employer contribution rate for each membership class as follows (the 2010-2011 rates are shown for reference):

	<u>2011-2012</u>	<u>2010-2011</u>
Regular	3.28 %	9.63 %
Special Risk	10.21 %	22.11 %
Special Risk Administrative Support	4.07 %	12.10 %
Legislators, Governor, Cabinet, State Attorneys, Public Defenders	7.02 %	15.20 %
Justices and Judges	9.78%	20.65 %
County Elected Officers	9.27%	17.50%
Senior Management Services	4.81%	13.43 %

63. Additionally, Senate Bill 2100 establishes required employer contributions for the 2011-2012 fiscal year for each membership class “to address unfunded actuarial liabilities of the system,” as follows:

	<u>2011-2012</u>
Regular	0.49 %
Special Risk	2.75 %
Special Risk Administrative Support	0.83 %
Legislators, Governor, Cabinet, State Attorneys, Public Defenders	0.88 %
Justices and Judges	0.77 %
County Elected Officers	0.73 %
Senior Management Services	0.32 %

64. The final section of Senate Bill 2100 states:

The Legislature finds that a proper and legitimate state purpose is served when employees and retirees of the state and its political subdivisions, and the dependents, survivors, and beneficiaries of such employees and retirees, are extended the basic protections afforded by governmental retirement systems. These persons must be provided benefits that are fair and adequate and that are managed, administered, and funded in an actuarially sound manner, as required by s. 14, Article X of the State Constitution and part VII of chapter 112, Florida Statutes. Therefore, the Legislature determines and declares that this act fulfills an important state interest.

Ch. 2011-68, § 42, at 113, Laws of Fla.

65. Senate Bill 2100 does not acknowledge the existence of collective bargaining agreements and does not provide any opportunity for Class members to engage in effective collective bargaining with respect to the terms of the new law.

66. Neither the language in Senate Bill 2100 nor its legislative history contain any statements or findings that the changes to the FRS were reasonable and necessary for an important public purpose.

## COUNT I

### **Impairment of Contract – 3% Deduction**

67. The allegations in Paragraphs 1 through 66 are realleged and incorporated herein by reference.

68. Article I, Section 10 of the Florida Constitution prohibits the passing of laws that impair contracts.

69. Section 121.011(3)(d), Florida Statutes, declares that the rights of FRS members established by Chapter 121, Florida Statutes, are “of a contractual nature, entered into between the member and the state, and such rights shall be legally enforceable as valid contract rights and shall not be abridged in any way.”

70. Chapter 121, Florida Statutes, provides that the FRS is a noncontributory plan and imposes upon employers the full amount of contributions necessary to fund member benefits under the FRS.

71. By deducting 3% of Class members’ gross compensation to make “contributions” to their retirement plan, Chapter 2011-68, Laws of Florida, substantially impairs the Class members’ contract with respect to the FRS.

72. The substantial impairment is neither reasonable nor necessary to serve an important public purpose.

73. The 3% employee contribution mandated by the provisions of Chapter 2011-68, Laws of Florida (2011) is unconstitutional in violation of Article I, Section 10 of the Florida Constitution.

## COUNT II

### **Impairment of Contract – Cost of Living Adjustment**

74. The allegations in Paragraphs 1 through 66 are realleged and incorporated herein by reference.

75. Article I, Section 10 of the Florida Constitution prohibits the passing of laws that impair contracts.

76. Section 121.011(3)(d), Florida Statutes, declares that the rights of FRS members established by Chapter 121, Florida Statutes, are “of a contractual nature, entered into between the member and the state, and such rights shall be legally enforceable as valid contract rights and shall not be abridged in any way.”

77. Chapter 121, Florida Statutes, provides that upon retirement, FRS members are entitled to an annual cost-of-living adjustment of three percent (3%) irrespective of the members’ years of service or the dates upon which the service was rendered.

78. By reducing Class members’ cost-of-living adjustment for their entire retirement based upon the amount of time they work after July 1, 2011, Chapter 2011-68, Laws of Florida, substantially impairs the Class members’ contract with respect to the FRS.

79. The substantial impairment is neither reasonable nor necessary to serve an important public purpose.

80. The amendment to the cost-of-living adjustment contained in Chapter 2011-68, Laws of Florida (2011), is unconstitutional in violation of Article I, Section 10 of the Florida Constitution.

### **COUNT III**

#### **Taking – 3% Deduction**

81. The allegations in Paragraphs 1 through 66 are realleged and incorporated herein by reference.

82. The Florida Constitution prohibits the taking of private property “except for a public purpose and with full compensation therefor paid to each owner.” Art. X, § 6, Fla. Const.

83. By deducting 3% of the Class members’ gross compensation as a condition of receiving retirement benefits which the State of Florida has been obligated to fully fund since 1975, without any commensurate increase in benefits or coverage, Chapter 2011-68, Laws of Florida, violates Article X, Section 6 of the Florida Constitution, as a taking of the Class members’ property for a public purpose without full compensation.

84. The 3% contribution provisions of Chapter 2011-68, Laws of Florida (2011) are unconstitutional in violation of Article X, Section 6 of the Florida Constitution.

### **COUNT IV**

#### **Taking – Cost of Living Adjustment**

85. The allegations in Paragraphs 1 through 66 are realleged and incorporated herein by reference.

86. The reduction of FRS members’ cost-of-living adjustments for the duration of their retirement based upon the amount of time they worked after July 1, 2011, without any commensurate increase in benefits or coverage, Chapter 2011-68, Laws of Florida, violates Article X, Section 6 of the Florida Constitution, as a taking of the Class members’ property for a public purpose without full compensation.

87. The amendments to the cost-of-living adjustment contained in Chapter 2011-68, Laws of Florida (2011), are an unconstitutional taking in violation of Article X, Section 6 of the Florida Constitution.

### COUNT V

#### **Abridgement of Collective Bargaining Right – 3% Deduction & Elimination of COLA**

88. The allegations in Paragraphs 1 through 66 are realleged and incorporated herein by reference.

89. Article I, Section 6 of the Florida Constitution provides:

**Right to work.**—The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

90. The subject of retirement benefits for public employees is a mandatory subject of bargaining that the Legislature cannot deny or abridge absent a compelling state interest implemented by the least restrictive means.

91. Chapter 2011-68, Laws of Florida, violates Article I, Section 6 of the Florida Constitution, by unilaterally altering the existing retirement benefits for Class members without providing any opportunity to engage in collective bargaining.

### CONCLUSION

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Declare that this action is properly brought as a class action pursuant to Florida Rule of Civil Procedure 1.220(b)(2), certify the Class described herein, and declare that Plaintiffs are proper representatives of the Class.

B. Enter a temporary injunction requiring that the 3% salary deductions from Class members temporarily be segregated and placed in an interest bearing account or short term investment fund for the duration of the litigation.

C. Enter final judgment:

1. Declaring that the provisions of Chapter 2011-68, Laws of Florida, that mandate deduction of three percent (3%) of the gross compensation of active members of the Florida Retirement System to serve as “contributions” toward the retirement benefits which they are entitled to receive under the Florida Retirement System (Ch. 2011-68, §§ 5, 7, 11, 13, 24, 26, 29, 33, 40, Laws of Fla.), substantially impair the Class members’ contract with the State of Florida in violation of Article I, Section 10 of the Florida Constitution;

2. Declaring that the provisions of Chapter 2011-68, Laws of Florida, that reduce the cost-of-living adjustment for those retiring after July 1, 2011, by the proportion of earned service credit that occurred after July 1, 2011 (Ch. 2011-68, § 17, Laws of Fla.), substantially impair the Class members’ contract with the State of Florida in violation of Article I, Section 10 of the Florida Constitution;

3. Declaring that the provisions of Chapter 2011-68, Laws of Florida, that mandate deduction of three percent (3%) of the gross compensation of the Class members to serve as “contributions” toward the retirement benefits which they are entitled to receive under the Florida Retirement System (Ch. 2011-68, §§ 5, 7, 11, 13, 24, 26, 29, 33, 40, Laws of Fla.), constitute a taking of private property for a public purpose without full compensation in violation of Article X, Section 6 of the Florida Constitution;

4. Declaring that the provisions of Chapter 2011-68, Laws of Florida, that reduce the cost-of-living adjustment for those retiring after July 1, 2011, by the proportion of earned service credit that occurred after July 1, 2011 (Ch. 2011-68, § 17, Laws of Fla.), as applied to the Class

members, constitute a taking of private property for a public purpose without full compensation in violation of Article X, Section 6 of the Florida Constitution;

5. Declaring that the provisions of Chapter 2011-68, Laws of Florida, that mandate deduction of three percent (3%) of the gross compensation of the Class members (Ch. 2011-68, §§ 5, 7, 11, 13, 24, 26, 29, 33, 40, Laws of Fla.) as well as the provisions that reduce the cost-of-living adjustment for those retiring after July 1, 2011, by the proportion of earned service credit that occurred after July 1, 2011 (Ch. 2011-68, § 17, Laws of Fla.), as applied to the Class members, constitute an abridgement of the right to collective bargaining in violation of Article I, Section 6 of the Florida Constitution;

6. Ordering that all 3% salary deductions taken pursuant to Chapter 2011-68, Laws of Florida, from employees who were members of FRS prior to July 1, 2011, be refunded to the Class members, with interest;

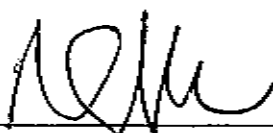
7. Permanently enjoining any future salary deductions from being taken pursuant to Chapter 2011-68, Laws of Florida from Class members' gross compensation;

8. Permanently enjoining defendants from implementing the reduction in cost-of-living adjustments as to Class members;

9. Awarding Plaintiffs their attorneys' fees, expenses, and costs incurred in prosecuting this lawsuit; and

10. Ordering such other and further relief as this Court may deem appropriate.

Respectfully submitted,



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*\* Motion to Appear Pro Hac Vice to be filed*

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