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## FLORIDA SUPREME COURT UPHOLDS PROSPECTIVE CHANGES TO STATE RETIREMENT BENEFITS

In a long awaited decision, the Supreme Court of Florida, by a 4-3 vote, overturned a trial court decision which had held unconstitutional various benefit changes made in the 2011 legislative session. The case, *Scott v. Williams*, \_\_\_ So.2d \_\_\_, Case No. SC12-520 (Fla. January 17, 2013), reinstated an employee contribution in the previously non-contributory plan, a reduction in the DROP accrual rate, and a sharp reduction in the COLA for that portion of retirement service earned after the effective date of the law. The Court reaffirmed a 1981 decision which had upheld a prospective reduction in public safety pension benefits, *Florida Sheriffs Association v. Department of Administration*, 408 So.2d 1033 (Fla. 1981).

Largely, the case turned on the interpretation of a specific provision in law governing the Florida Retirement System, which covers state, county and school employees (as well as some municipal employees) entitled “preservation of rights.” The section deemed participation in the FRS to be a contract. When the benefit reductions were adopted in 2011, a coalition of public employees filed suit in state court in Tallahassee challenging the amendments as an impairment of contract under the federal and Florida constitutions, as an unlawful taking without just

10059 NORTHWEST 1ST COURT, PLANTATION, FLORIDA 33324

PHONE: (954) 916-1202 • FAX: (954) 916-1232  
[www.robertdklausner.com](http://www.robertdklausner.com)



compensation, and a violation of the collective bargaining provisions in the state constitution.

The majority found that the contract provision was meant only to preserve benefits already earned, leaving the state free to alter the pension contract for future service. The dissenting justices noted that the changes created substantial reductions in future benefits and that even under the view that prospective changes were permitted, the amount of the reductions for some members was so substantial that it arguably met the complete deprivation standard that earlier Florida cases had set as a fact specific benchmark for impairment.

NCPERS filed an amicus brief with the Florida Supreme Court urging that the law be declared unconstitutional.

The effect of the decision will better be known as the Florida Legislature moves into its 2013 session. The Speaker Designate has expressed a belief that the FRS ought to be closed and new plan instituted. The decision may also embolden municipal governments in Florida, most of which have their own retirement systems, to see the decision as a legal “green light” to engage in substantial prospective reductions of retirement benefits.

It is significant that the Supreme Court emphasized again that issues relating to pensions and retirement are mandatory subjects of collective bargaining. Still to be decided is whether a provision in the state bargaining law which allows employers in financial distress to impose contract terms on an expedited basis is consistent with

the constitutional right to bargain. A case challenging that law is pending in Miami Dade County and is awaiting a trial date.

Challenges to benefit reductions continue nationwide, with recent filed cases pending in federal court in Ohio and Texas. In December, a federal judge in Maryland struck down a change in COLA benefits to retirees in Baltimore City but sustained prospective reductions to active members with less than 15 years of service. Both the City and the plaintiffs have appealed to the U.S Court of Appeals for the 4<sup>th</sup> Circuit.