

YOEL MAYERFELD, in his individual capacity, :
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and :
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WADE STEEN, in his individual capacity, :
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MARK HILL, in his individual capacity, :
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and :
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CRAIG BROOKS, in his individual capacity, :
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and :
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JAMES MCGREEVY, in his individual capacity, :
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and :
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TIM MYERS, in his individual capacity, :
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Defendants. :

PRELIMINARY STATEMENT

All allegations made in this Complaint are based upon information and belief except those allegations that pertain to Plaintiffs, which are based on personal knowledge. Each allegation in this Complaint either has evidentiary support or, alternatively, pursuant to Rule 11(b)(3) of the Federal Rules of Civil Procedure, is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

INTRODUCTION

1. Plaintiffs Dean Dennis and Robert Buerkle bring this action against the Ohio State Teachers Retirement Board (the “Board”) and the individual members of the Board, on behalf of Plaintiffs and all other similarly situated retirees to challenge the Defendants’ unlawful

and indefinite elimination of the annual cost of living allowances (“COLA”), for Plaintiffs and all other retirees beginning on July 1, 2017.

2. Plaintiffs seek damages and declaratory and injunctive relief for themselves and all other similarly situated persons in the form of reinstatement of their COLA, restitution of foregone COLA, and reasonable attorney fees and costs.

JURISDICTION AND VENUE

3. This Court has original jurisdiction pursuant to 28 U.S.C. § 1331 because the Plaintiffs’ federal claims arise under the Constitution and laws of the United States.

4. This Court has supplemental jurisdiction over all other claims pursuant to 28 U.S.C. § 1337(a) because such claims are part of the same case or controversy under Article III of the United States Constitution, and 28 U.S.C. § 1367, as they arise from the same nucleus of operative facts as the federal claims.

5. Venue with this court is appropriate pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims occurred in this judicial district.

THE PARTIES

6. Plaintiff Dean Dennis is a United States citizen who resides in Hamilton County, Ohio. Mr. Dennis was employed by the Cincinnati Public Schools and had thirty-five years of STRS service when he retired on January 1, 2008. During his employment, Mr. Dennis and his employer contributed to the STRS defined benefit plan. Upon his retirement, he was approved for a retirement allowance and became vested under Ohio law in all amounts and other benefits to which STRS retirees are entitled thereunder.

7. Plaintiff Robert Buerkle is a United States citizen who resides in Hamilton County, Ohio. When Mr. Buerkle retired on July 1, 2003, he had over 35 years of STRS service

credit, most of which (twenty-six years) related to his employment with the Cincinnati Public Schools. Mr. Buerkle also taught at Miami University, Butler County Vocational School, and Cincinnati State. During his employment, Mr. Buerkle and his employers contributed to the STRS defined benefit plan. Upon his retirement, he was approved for a retirement allowance and became vested under Ohio law in all amounts and other benefits to which STRS retirees are entitled thereunder.

8. Defendant Board is a *sui juris* public entity established pursuant to O.R.C. § 3307.03 that oversees and administers approximately \$80 billion on behalf of the 494,000 active, inactive and retired Ohio public educators. Because Defendant's assets total approximately \$80 billion, it is one of the largest public pension funds in the United States.

9. As an entity created by state statute, the Board acts at all times under color of state law. All actions by the Board complained of herein were undertaken under color of state law as the official policy, practice and custom of Defendant.

10. Defendants Robert Stein, Carol Correthers, Taiya L. Hayden, Dale Price, Paolo Demaria, Yoel Mayerfeld, Wade Steen, Mark Hill, Craig Brooks, James McGreevy, and Tim Myers (collectively, "Individual Defendants") were all members of the Board when the actions relevant to this Complaint occurred. They are each sued in their individual capacities.

STATEMENT OF FACTS

I. THE STRS DEFINED BENEFIT PLAN IS A TRUST CONSISTING OF AMOUNTS EARNED AND CONTRIBUTED BY EMPLOYEES OF OHIO PUBLIC SCHOOLS AND UNIVERSITIES AND AMOUNTS CONTRIBUTED BY THEIR EMPLOYERS ON THEIR BEHALF. ALL AMOUNTS HELD BY THE STRS BOARD ARE HELD IN TRUST FOR THE BENEFIT OF OHIO'S PUBLIC EDUCATORS – THE SOLE AND EXCLUSIVE BENEFICIARIES OF THE STRS TRUST.

11. Plaintiffs and members of the Class were public educators in Ohio who were at

all times during their employment required as a condition of their employment to contribute a portion of their earnings to the STRS defined benefit trust.

12. Prior to 2001, the STRS defined benefit plan was the only STRS retirement plan available to Ohio teachers. Beginning in 2001, two additional options were offered – a defined contribution plan and a combined plan.¹ Ohio public educators are required to choose their STRS retirement plan at the outset of their employment. Individuals who select the defined benefit plan cannot change their selection. Individuals who select the defined contribution plan or combined plan may change their selection during their fifth year of employment.²

13. This case concerns the STRS defined benefit plan. Individuals electing the STRS defined benefit plan do so at the outset of their employment as Ohio educators and cannot subsequently change their plan election. As a result of this requirement, Ohio’s public educators reasonably rely upon the expectation that the STRS defined benefit plan will fulfill its benefit commitments, including the payment of an annual cost of living allowance to ensure that the value of retirement benefits keeps pace with inflation. According to the Board’s website, 91 percent of Ohio’s public educators participate in the STRS defined benefit plan.³

14. Ohio public educators electing to participate in the STRS defined benefit plan are required to contribute a portion of their earned wages and salaries to the STRS defined benefit trust. Currently the employee contribution is 14 percent. Ohio public schools and universities contribute an amount to the STRS trust on behalf of each employee based on each

¹ An additional option in the form of privately-run defined contribution plan known as the Alternative Retirement Plan (“ARP”) is available to university faculty. The ARP is not a subject of this action.

² See STRS website detailing retirement plan options and election rights: <https://www.strsoh.org/aboutus/impact/plans.html> (last accessed August 22, 2019).

³ Id.

employee's earnings. Currently, the employer contribution is also 14 percent.⁴ Member and employer contributions are the sole sources of funding for the STRS defined benefit trust.

Indeed, Defendant's website states that:

Members' benefits are created by three sources:

- Their annual contributions during their career – they currently contribute 14% of their annual salary.
- Their employer's contributions during their career.
- Investment earnings resulting from those contributions.⁵

15. Thus, the amounts received by the STRS defined benefit trust are derived from the private property of individual Ohio public educators (i.e., their earnings) and amounts paid to the STRS defined benefit trust on behalf of individual Ohio public educators by their employers. All such amounts are held in trust by the STRS Board and administered exclusively for the benefit of members of the STRS defined benefit plan. Indeed, Ohio law and the STRS Board expressly recognize and acknowledge that it and its members are trustees of the STRS owing fiduciary duties to STRS beneficiaries such as Plaintiffs.⁶

II. THE BOARD OVERSEES THE OPERATIONS, ADMINISTRATION, AND FUNDING OF STRS – A TRUST EXISTING FOR THE BENEFIT OF CURRENT AND RETIRED TEACHERS – INDEPENDENT OF THE STATE.

16. Defendant Board, and the pension system it oversees, are administratively and financially independent of the state in the following ways:

- a. Under O.R.C. § 3307.05, the Board is made up of eleven members, four of whom are appointed to their positions and seven of whom are elected by the

⁴ Id.

⁵ <https://www.strsoh.org/aboutus/impact/db.html> (last accessed August 22, 2019).

⁶ See https://www.strsoh.org/_pdfs/board/board-policies.pdf p. 14, last visited May 13, 2019. See also *State ex rel. Hovath v. State Teachers Ret. Bd.*, 1995 Ohio App. LEXIS 1292 (Ohio App. 1995) (Noting STRS Board's "fiduciary obligations.").

members of the STRS.

- b. The Board is the only entity empowered to carry out the provisions of O.R.C. 3307.01 *et seq.*
- c. Under O.R.C. § 3307.14, the Board is the trustee of five funds: The Teachers' Savings Fund, made up of funds accumulated from the contributions deducted from teachers participating in the STRS defined benefit plan; The Employers' Trust Fund, made up of funds from employer contributions; The Annuity and Pension Reserve Fund; The Survivors' Benefit Fund; and The Guarantee Fund, which consists of income derived from STRS investments and transferred interest.
- d. The Board manages the STRS funds in a fiduciary capacity. As trustee of the aforementioned five funds, the Board is tasked to "discharge their duties with respect to the funds solely in the interests of the [STRS participants and beneficiaries]." O.R.C. § 3307.15(A). Furthermore, because the Board and its individual members exercise discretionary authority or control with respect to the management of STRS investments, they are specifically defined as fiduciaries under O.R.C. 3307.01(K).
- e. The contributions from Ohio public educators and their employers are the only contributions mandated by O.R.C. § 3307.01 *et seq.*
- f. Under O.R.C. § 3307.12, the Ohio Treasurer of State is merely the custodian of the funds enumerated in O.R.C. § 3307.14, and all STRS property is held in the name of the Board under O.R.C. § 3307.03. As a result, funds deposited with the Ohio Treasurer of State never cease to be the property of

the STRS.

- g. Under O.R.C. § 3307.14(E), in the event of a deficit in any of the funds listed in O.R.C. § 3307.14, the Guarantee Fund is to be used to cover that shortfall. Should the Guarantee Fund possess insufficient funds, the deficit is made up by an increased contribution from the employers, not the state of Ohio.
- h. Under R.C. 3307.01(A), an “employer” is any college, university, institution, board of education, school district, or other agency by which a teacher is employed and paid.

17. Under the aforementioned statutes, the only funds that can be used to satisfy a judgment in this case or a debt of STRS are funds belonging to STRS. As a result, the other monies and funds possessed by the Ohio Treasury will not and cannot be used to satisfy a judgment in this case.

III. THE U.S. AND OHIO CONSTITUTIONS PROHIBIT GOVERNMENTAL IMPAIRMENT OF CONTRACTS AND THE DEPRIVATION OF PROPERTY INTERESTS WITHOUT DUE PROCESS AND JUST COMPENSATION.

A. Contract Rights Protected by the Contract Clause

18. Article I Section 10 of the U.S. Constitution provides in pertinent part that “[n]o state shall . . . pass any . . . Law impairing the Obligation of Contracts . . .” (The “Contract Clause”). Similarly, Article II section 28 of the Ohio Constitution provides that “[t]he General Assembly shall have no power to pass . . . laws impairing the obligation of contracts.”

19. A state violates the Contract Clause when: there is a contractual relationship, a change in law impairs the contractual relationship, and the impairment is substantial. *See General Motors Corp. v. Romein*, 503 U.S. 181, 186 (1992).

20. It is clearly established that vested pension rights constitute a contractual

relationship protected by the Contract Clause. *See State ex rel. Horvath v. State Teachers Retirement Bd.*, 83 Ohio St. 3d 67, 77 (1998), citing *State ex rel. Cunat v. Trustees of Cleveland Police Relief & Pension Fund*, 149 Ohio St. 477, 481-482 (1948) (holding that “vested rights” statutes create contractual rights to public pension benefits).

21. As discussed in greater detail below, Plaintiffs allege that they had an unconditional, contractual right to a COLA, or alternatively that they had a contractual right to receive a COLA unless the Board’s actuary determined (in a specific, designated report) that a reduction was necessary to preserve the fiscal integrity of the system, and the Board then chose to reduce the COLA based on that determination.

B. Property Interests Protected by The Due Process Clause

22. The Fourteenth Amendment to the United States Constitution provides in pertinent part that “nor shall any State deprive any person of life, liberty, or property, without due process of law.” (the “Due Process Clause”). The Supreme Court of the United States explained when a property interest protected by the Due Process Clause arises:

[T]o have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of *entitlement* to it. *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972) (emphasis added).

23. Constitutionally protected property interests are not created by the Constitution, but rather by “existing rules or understandings that stem from an independent source such as state law – rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.” *Id.*

24. With regard to pension benefits, a plaintiff “need not demonstrate that their benefits are ‘vested’ under local or state law in order to show a ‘legitimate entitlement’ to

those benefits.” *Kahles v. City of Cincinnati*, 2015 U.S. Dist. LEXIS 112504, **14-15, 2015 WL 5016505 (S.D. Ohio 2015) (emphasis added). Rather, the existence of a protected property interest (i.e., a reasonable expectation of entitlement) is determined by whether the language of the statute or rule conferring the benefit is framed in mandatory terms and whether it imposes substantive constraints on official discretion to award the benefit. *See Med. Corp., Inc. v. City of Lima*, 296 F.3d 404, 409 (6th Cir. 2002) (citations omitted).

25. A Constitutionally protected property interest is not recognized if an official, board or agency is granted unfettered discretion to deny the benefit. *Id.* at 410. However, where, as in this case, applicable law grants a board limited or no discretion to reduce or discontinue benefits, the actor does not possess unfettered discretion, and a Constitutionally protected property interest is recognized. *See Kahles v. City of Cincinnati*, 2015 U.S. Dist. LEXIS 112504, *15, 2015 WL 5016505 (S.D. Ohio 2015) (“The only basis upon which the Board could reduce or discontinue the benefits is defined in the Code, and is not left to the Board’s unfettered discretion. The Court finds these facts are sufficient to establish an interest in the receipt of the benefits that is protected by procedural due process.”).

26. According to the U.S. Supreme Court, the “unique mandates” of the particular statutory scheme at issue must be examined to determine whether unfettered discretion has been conferred to the board or official in question. *See Connecticut Bd. Of Pardons v. Dumschat*, 452 U.S. 458, 466 (1981). Likewise, the Ohio Supreme Court has held that “the nature and extent of a contributor’s protected property rights in the STRS are determined *solely* by the statutes that govern the system.” *See State ex rel. Horvath v. State Teachers Retirement Bd.*, 83 Ohio St. 3d 67, 74 (1998) (emphasis added).

27. Applying these principles, courts have recognized the STRS Board does not

possess unfettered discretion but rather clearly limited authority with respect to the modification of benefits mandated by statute. *See Smith v. State Teachers Retirement Board*, 1998 Ohio App. LEXIS 403, **20-22, 1998 WL 54362 (10th Dis. App. 1998) (“Appellees [STRB] have pointed to no authority to demonstrate that they have discretion to *decrease* a retirement benefit which has been *increased* by the state legislature”) (emphasis in original). Likewise, the Ohio Attorney General rendered an opinion on future COLA rights of retirees concluding that applicable law “entitled” retirees to the COLA set by statute. 1987 Ohio Op. Atty. Gen. No. 44, 1987 Ohio AG LEXIS 68, *12. Indeed, the Sixth Circuit has expressly recognized that a state pension fund COLA statute “may create a property interest under the Due Process Clause.” *See Puckett v. Lexington-Fayette Urban Cnty. Gov’t*, 833 F.3d 590, 605 (6th Cir. 2016).

28. To apply the foregoing principles to this case, it is necessary to review the express language of the General Assembly as set forth in the Ohio Revised Code. As discussed in detail below, Plaintiffs submit that O.R.C. § 3307.67(A) mandates that the STRS Board pay retirees an annual COLA of two percent beginning on August 1, 2013. On its face, O.R.C. § 3307.67(E) does not grant the STRS Board “unfettered discretion” to modify the COLA mandated by the plain and unambiguous language of O.R.C. § 3307.67(A).

IV. IN 2012 THE OHIO GENERAL ASSEMBLY CREATED A STATUTORY ENTITLEMENT TO AN ANNUAL COLA BENEFIT FOR STRS BENEFICIARIES, LIMITING THE BOARD’S DISCRETION TO ADJUST THE COLA BENEFIT.

29. Plaintiffs and members of the Class were public employees required, as a condition of their employment, to contribute a portion of their earnings to the STRS defined benefit plan. Upon retirement and the payment of a monthly retirement benefit, Ohio law vests

a right in such individuals, including Plaintiffs and members of the Class, to receive such retirement benefits so long as they remain beneficiaries of any of the funds established as part of the STRS. *See* O.R.C. § 3307.42.

30. O.R.C. § 3307.67 was amended by the General Assembly in 2012 to provide in pertinent part as follows:

(A) Except as provided in divisions (D) and (E) of this section, the state teachers retirement board *shall* annually increase each allowance or benefit payable under the STRS defined benefit plan. Through July 31, 2013, the increase *shall* be three per cent. On and after August 1, 2013, the increase *shall* be two per cent. (Emphasis added)

31. O.R.C. § 3307.67(E) restricted the ability of the STRS Board to “adjust” the annual increases provided for in subsection (A), granting it the discretion to do so only if:

[T]he board’s actuary, in its annual actuarial valuation required by section 3307.51 of the Revised Code or in other evaluations conducted under that section, determines that an adjustment does not materially impair the fiscal integrity of the retirement system or *is necessary to preserve the fiscal integrity of the system*. (Emphasis added).

32. The Board’s discretion to adjust annual increases under O.R.C. § 3307.67(E) is not unfettered. Of particular import to this case, the Board may only reduce the annual increase payable under the STRS defined benefit plan if the Board’s actuary “determines” that such a reduction is “necessary to preserve the fiscal integrity of the system,” *and* such determination is set forth either in the actuary’s annual actuarial valuation or other evaluations conducted under O.R.C. § 3307.51.

33. The requirement that the Board’s actuary certify that a reduction in the statutorily mandated COLA is “necessary to preserve the fiscal integrity of the system” is a substantive limitation on the Board’s authority to adjust the COLA. Under O.R.C. § 3307.01(J), the Board’s actuary must be a member of the American Academy of Actuaries. Members of the American Academy of Actuaries are required to adhere to a strict Code of

Professional Conduct requiring, among other things, professional integrity and standards of practice. Thus, the actuary's certification of necessity is not a meaningless requirement that can be obtained upon request. The requirement to include such certification in a publicly filed and disseminated report serves a significant and meaningful interest in affording interested parties, including retirees, an opportunity to be publicly heard and challenge such a determination before the Board.

34. In addition to the actuary's annual actuarial valuation, O.R.C. § 3307.51 provides for four other reports that may be prepared by the actuary under the section's purview:

- a. An actuarial investigation of the mortality, service, and other experience of the members, retirants, and beneficiaries of the system, and other system retirants as defined in section 3307.35 of the Revised Code to update the actuarial assumptions used in the actuarial valuation required by division (A). O.R.C. § 3307.51(B).
- b. Other studies or actuarial valuations to determine the adequacy of the normal and deficiency rates of contribution provided by section 3307.28 of the Revised Code. O.R.C. § 3307.51(C).
- c. An actuarial analysis of any introduced legislation expected to have a measurable financial impact on the retirement system. O.R.C. § 3307.51(D).
- d. A report giving a full accounting of the revenues and costs relating to the provision of benefits under section 3307.39 of the Revised Code. O.R.C. § 3307.51(E).

35. Significantly, O.R.C. § 3307.51 expressly requires each of the reports it describes to be publicly filed with specified public offices, councils and committees. For example, the annual actuarial evaluation must be submitted to the Ohio retirement study council, the director of budget and management, and the standing committees of the house of representatives and the senate with primary responsibility for retirement legislation. It must

be submitted to each of these parties immediately, but no later than the first day of January following the year for which the valuation was made. O.R.C. § 3307.51(A).

36. The timely preparation and filing of the reports provided for in O.R.C. § 3307.51 serves a significant public interest in allowing concerned members of the public including, among others, beneficiaries of the STRS, to be informed of the performance of the system, and to provide advance notice of any proposed or recommended changes or adjustments to the system. Indeed, Defendant's board meetings are public meetings at which beneficiaries are entitled to address the Board on issues of concern.

V. IN 2013, THE STRS BOARD CREATED A VESTED A RIGHT TO AN ANNUAL COLA BENEFIT FOR THEN CURRENT RETIREES.

37. O.R.C § 3307.42(A) provides, in pertinent part, that:

[T]he granting to any person of an allowance, annuity, pension or other benefit under the STRS defined benefit plan... pursuant to an action of the state teachers' retirement board *vests a right in such person*, so long as the person remains the beneficiary of any of the funds established by section 3307.14 of the Revised Code, to receive the allowance, annuity, pension, or benefit *at the rate fixed* at the time of granting the allowance, annuity, pension, or benefit. (Emphasis added).

38. The "STRS defined benefit plan" means "the plan described in sections 3307.50 to 3307.79 of the revised code." O.R.C. § 3307.42(N).

39. Under the STRS defined benefit plan, an "allowance" is "the pension plus the annuity, or *any other payment* under the STRS defined benefit plan." O.R.C. § 3307.50(E) (Emphasis added).

40. O.R.C. § 3307.67 provides for an annual increase payable to beneficiaries of the STRS defined benefit plan.

41. Pursuant to O.R.C. § 3307.50(E), this annual increase constitutes an "allowance" under the STRS defined benefit plan.

42. In August 2013, the Board adopted OAC 3307:1-10-01, mandating that the Board “shall annually increase each allowance or benefit payable under the defined benefit plan by two percent.”⁷

43. The 2013 version of OAC 3307:1-10-01(B) is effectively a verbatim restatement of O.R.C. § 3307.67, but the Board chose not to reserve for itself any authority to adjust the COLA for vested beneficiaries.

44. Under the express language of O.R.C. § 3307.42(A), each beneficiary who became entitled to a 2% COLA by virtue of the aforesaid Board Rule thereby acquired a vested right to said COLA, subject to no exceptions, and this vested right was to last “so long as the person remains the beneficiary of any of the funds established by section 3307.14.”

VI. IN 2017 THE STRS BOARD ABRUPTLY, INDEFINITELY, AND UNLAWFULLY ELIMINATED THE COST OF LIVING ALLOWANCE FOR ALL CURRENT AND PROSPECTIVE STRS BENEFICIARIES.

45. On November 14, 2016, the STRS Board’s actuary submitted the annual actuarial valuation required by O.R.C. § 3307.51(A). The annual valuation reported, among other things, that the STRS plan had experienced net gains during the year and maintained a steady funding percentage. Significantly, there is no indication in the valuation report that a reduction or elimination of cost of living allowances was recommended or necessary to preserve the fiscal integrity of the system.

46. On March 3, 2017, the Board’s actuary submitted the actuarial experience review contemplated by O.R.C. § 3307.51(B). The experience review recommended changes to several actuarial assumptions utilized by Defendant. For example, the review recommended a reduction in the rate of inflation from 2.75% to 2.5%, and a reduction in the

⁷ Retirees with effective dates following August 1, 2013 are subjected to a 60-month waiting period. OAC 3307:1-10-01(C).

assumed rate of return from 7.75% to 7.00%. The actuarial experience review projected that the effect of the proposed assumption changes would be to reduce the plan's funding percentage. However, there is no mention in the actuarial experience review that a reduction or elimination of cost of living allowances was recommended or necessary to preserve the fiscal integrity of the system.

47. On or about March 16, 2017, the Board voted to accept in large part the actuary's recommended assumption changes. Minutes of the meeting reflect that the Board anticipated considering "plan design changes" at its next meeting in April 2017.

48. On April 20, 2017, the Board attempted to exercise the limited authority granted to it by O.R.C. § 3307.67(E) to "adjust" annual COLA benefits by amending OAC 3307:1-10-01 to eliminate all such increases, regardless of the beneficiary's retirement date, indefinitely.

49. The Board had previously relinquished any right it had to reduce the COLA for beneficiaries who had retired prior to this date, by virtue of its 2013 promulgation of OAC 3307:1-10-01, which had vested in those beneficiaries the right to an annual two percent COLA pursuant to O.R.C. § 3307.42(A).

50. In addition, as of that date, the requirements of O.R.C. § 3307.67(E) for adjusting the COLA of any retiree had not been satisfied. Specifically, no report prepared in compliance with O.R.C. § 3307.51 contained a determination by the Board's actuary that such an indefinite elimination of COLA benefits was necessary to preserve the fiscal integrity of the system.

51. Despite the fact that no report prepared in compliance with O.R.C. § 3307.51 contained a determination by the Board's actuary that the elimination of COLA benefits was

necessary to preserve the fiscal integrity of the system, the Board voted to indefinitely eliminate the COLA for all beneficiaries.

52. As a direct result of the Board's April 20, 2017 decision to eliminate the COLA benefits, no cost of living increases have since been issued to Plaintiffs and the Class they seek to represent.

CLASS ALLEGATIONS

53. Plaintiffs seek to represent a class pursuant to Rule 23 of the Federal Rules of Civil Procedure, defined as all STRS defined benefit plan beneficiaries who would have received a two percent COLA benefit on or after July 1, 2017 but for the Board's April 20, 2017 vote eliminating those increases (the "Class").⁸

54. Members of the Class are so numerous — more than one hundred forty-five thousand — that joinder of individual claims is impracticable. Membership in the Class can be objectively determined based on information found in Defendant's records.

55. There are significant questions of fact and law common to the members of the Class which predominate over questions affecting only individual members. The following questions of law and fact, among others, are common to all members of the Class:

- a. Whether the Board's promulgation of OAC 3307:1-10-01 vested a right to an annual 2% COLA for those who became entitled to it by virtue of that action;
- b. Whether the Board's April 20, 2017 decision to reduce the cost of living adjustment to 0%, without compensation to those retirees who had a vested property interest in an annual 2% COLA, violated the Takings Clause of the U.S. Constitution and the Ohio Constitution;

⁸ Plaintiffs reserve the right to revise this class definition prior to moving for class certification.

- c. Whether the Board's April 20, 2017 decision to reduce the cost of living adjustment to 0% violated O.R.C. 3307.67;
- d. Whether Plaintiffs and the Class have received annual cost of living adjustments since July 1, 2017;
- e. Whether the Board's April 20, 2017 decision to indefinitely eliminate the cost of living adjustments was supported by a prior determination in a report prepared by the Board's actuary, in accordance with R.C. Section 3307.51, that the reduction was necessary to preserve the fiscal integrity of the retirement system;
- f. Whether the Board's April 20, 2017 decision to indefinitely eliminate annual cost of living adjustments without a prior determination by the Board's actuary, in a report prepared in accordance with R.C. Section 3307.51, was a violation of the Due Process guaranteed by the Fourteenth Amendment of the United States Constitution;
- g. Whether the Board's April 20, 2017 decision to indefinitely eliminate annual cost of living adjustments was a violation of Article I, Section 16 of the Ohio Constitution;
- h. Whether the Board's decision to indefinitely eliminate annual cost of living adjustments violated the Contracts Clause of the United States Constitution;
- i. Whether the Board's decision to indefinitely eliminate annual cost of living adjustments breached the Board's fiduciary duties owed to Plaintiffs and the Class; and

- j. Whether the Board has been unjustly enriched to the detriment of Plaintiffs and the Class by indefinitely eliminating annual cost of living adjustments since July 1, 2017.

56. Plaintiffs' claims are typical of the claims of the Class because their claims arose from the same events as those of the Class, including but not limited to the events of April 20, 2017, when the Board unlawfully eliminated the annual cost of living increases prescribed by Ohio law.

57. Plaintiffs will fairly and adequately represent the Class because they have the Class members' best interests in mind, their claims are co-extensive with, and identical to, those of the Class, and because they are represented by qualified counsel experienced in litigation of this nature, including counsel that successfully represented (and continues to represent under a 30 year consent decree) a class of current Cincinnati employees in the relatively recent employee benefits litigation titled, *Sunyak, et al v. City of Cincinnati, et al.*, Case No. 1:11-cv-00445-MRB.

58. A class action is superior to other available methods for fair and efficient adjudication of these claims since individual joinder of all members of the Class (more than one hundred forty thousand class members) is impracticable, and most members of the Class are without the financial resources necessary to pursue this matter because most are now living on their retirement benefits. Even if some members of the Class could afford to litigate their claims separately, such a result would unduly burden the courts in which the individual cases would proceed. Further, separate individual litigation will increase the time and expense of resolving this common dispute – a dispute that flows from Defendants' identical unlawful conduct described above.

59. The Class may also be certified pursuant to Rule 23(b)(1) and (2) of the Federal Rules of Civil Procedure because the prosecution of separate actions by individual members of the Class would create the risk of inconsistent adjudications that would establish incompatible standards of conduct for Defendant. Further, adjudications with respect to individual class members, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interest. Moreover, Defendant has acted on grounds that apply generally to the Class, thereby making appropriate final injunctive or corresponding declaratory relief with respect to the Class as a whole including, but not limited to, the payment of the two percent cost of living adjustment going forward and providing to Plaintiff and the Class restitution for the prior unpaid cost of living adjustments.

STATEMENT OF CLAIMS

COUNT 1: IMPAIRMENT OF CONTRACT (United States Constitution, Article 1, Section 10) (As to the Board)

60. Plaintiffs incorporate by reference the prior paragraphs as if fully stated herein.

61. The General Assembly empowered the Board to create vested interests, through Board action, in O.R.C. § 3307.42(A). The Board exercised that authority in 2013 when it enacted OAC 3307:1-10-01 and created a vested right to an annual two-percent COLA for retirees then participating in the STRS defined benefit plan, and in those who subsequently became entitled to a two-percent COLA under the 2013 Rule.

62. It is clearly established under Ohio law that vested pension benefits give rise to Constitutionally protected contractual rights.

63. In 2017 the Board unlawfully and without authority withheld from Plaintiffs and members of the class their vested pension benefit consisting of an annual two-percent

COLA increase. Having created a vested right to an annual two-percent COLA, the Board lacked all authority to rescind that right.

64. The Board's actions substantially impaired Plaintiffs' and the class's contractual interests.

65. As a direct and proximate result of the Board's unlawful impairment of Plaintiffs' and the Class's vested contractual interest, Plaintiffs and the Class are entitled to damages and all other appropriate relief.

COUNT 2: IMPAIRMENT OF CONTRACT
(United States Constitution, Article 1, Section 10) (As to the Individual Defendants)

66. Plaintiffs incorporate by reference the prior paragraphs as if fully stated herein.

67. The General Assembly empowered the Board to create vested interests through Board action in O.R.C. § 3307.42(A). The Board exercised that authority in 2013 when it enacted OAC 3307:1-10-01 and created a vested right to an annual two-percent COLA for retirees then participating in the STRS defined benefit plan, and in those who subsequently became entitled to a two-percent COLA under the 2013 Rule..

68. It is clearly established under Ohio law that vested pension benefits give rise to Constitutionally protected contractual rights.

69. In 2017, the Individual Defendants, who were at the time the full membership of the Board, unlawfully and without authority withheld from Plaintiffs and members of the class their vested pension benefit consisting of an annual two-percent COLA increase. Having created a vested right to an annual two-percent COLA, the Individual Defendants lacked all authority to rescind that right.

70. The actions of the Individual Defendants substantially impaired Plaintiffs' and the class's contractual interests.

71. As a direct and proximate result of Individual Defendant's unlawful impairment of Plaintiffs' and the Class's vested contractual interest, Plaintiffs and the Class are entitled to damages and all other appropriate relief.

COUNT 3: UNCONSTITUTIONAL TAKING
(42 U.S.C. § 1983, Article 1 Section 19 OH Constitution) (As to the Board)

72. Plaintiffs incorporate by reference the prior paragraphs as if fully stated herein.

73. O.R.C. § 3307.42 expressly provides that the granting of a benefit to any person, pursuant to an action of the Board, vests a right in such person to continue to receive that benefit for as long as that person remains a beneficiary of funds established by R.C. 3307.14. Thus, the General Assembly empowered the Board to create vested interests through Board action.

74. The Board exercised that authority in 2013 by enacting OAC 3307:1-10-01, effective August 1, 2013, thereby creating a vested right to an annual two-percent COLA for retirees then participating in the STRS defined benefit plan, and in those who subsequently became entitled to a two-percent COLA under the 2013 Rule..

75. Pursuant to O.R.C § 3307.42, this action of the Board gave to those who then (and subsequently) began receiving a two percent COLA benefit, a vested interest in that COLA benefit for as long as they remained beneficiaries of the funds established by O.R.C. § 3307.14.

76. Plaintiffs' vested interest in the two percent COLA benefit was a property interest of which they could not lawfully be deprived without just compensation.

77. By taking the two percent COLA benefit from those retirees in whom it had vested, the Board deprived said retirees of their property without compensation, in violation of the Takings Clause of the United States Constitution.

78. The Board's act of unlawfully depriving Plaintiffs and the Class of their substantial vested property interest in their retirement benefits (the annual two percent cost of living adjustment benefit), without providing just compensation in return, violated their rights under the Takings Clause of the United States Constitution and the Constitution of the State of Ohio.

79. As a direct and proximate result of the Board's unconstitutional taking, Plaintiffs and the Class are entitled to damages and all other appropriate relief.

**COUNT 4: UNCONSTITUTIONAL TAKING
(42 U.S.C. § 1983)(As to the Individual Defendants)**

80. Plaintiffs incorporate by reference the prior paragraphs as if fully stated herein.

81. O.R.C. § 3307.42 expressly provides that the granting of a benefit to any person, pursuant to an action of the Board, vests a right in such person to continue to receive that benefit for as long as that person remains a beneficiary of funds established by R.C. 3307.14. Thus, the General Assembly empowered the Board to create vested interests through Board action.

82. The Board may only act when its members, such as the Individual Defendants, authorize an action.

83. The Board exercised its authority in 2013 by enacting OAC 3307:1-10-01, effective August 1, 2013, thereby creating a vested right to an annual two-percent COLA for retirees then participating in the STRS defined benefit plan, and in those who subsequently became entitled to a two-percent COLA under the 2013 Rule..

84. Pursuant to O.R.C § 3307.42, this action of the Board gave to those who then (and subsequently) began receiving a two percent COLA benefit, a vested interest in that COLA benefit for as long as they remained beneficiaries of the funds established by O.R.C. § 3307.14.

85. Plaintiffs' vested interest in the two percent COLA benefit was a property interest of which they could not lawfully be deprived without just compensation.

86. By taking the two percent COLA benefit from those retirees in whom it had vested, the Individual Defendants, acting under color of state law as members of the Board, deprived said retirees of their property without compensation, in violation of the Takings Clause of the United States Constitution.

87. The Individual Defendants' act of unlawfully depriving Plaintiffs and the Class of their substantial vested property interest in their retirement benefits (the annual two percent cost of living adjustment benefit), without providing just compensation in return, violated their clearly established rights under the Takings Clause of the United States Constitution and the Constitution of the State of Ohio.

88. As a direct and proximate result of the Individual Defendant's unconstitutional taking, Plaintiffs and the Class are entitled to damages and all other appropriate relief.

**COUNT 5: VIOLATION OF PROCEDURAL DUE PROCESS
(42 U.S.C. § 1983) (As to the Board)**

89. By enacting O.R.C. § 3307.67(A), the General Assembly created an entitlement to annual STRS defined benefit increases.

90. In O.R.C. § 3307.67(E) the General Assembly granted the STRS Board limited authority to adjust annual COLA increases if and only if the Board's actuary, in its annual valuation under O.R.C. § 3307.51 or in other evaluations conducted under that section, determines that such an adjustment does not materially impair the fiscal integrity of the retirement system or is "necessary to preserve the fiscal integrity of the system."

91. Under O.R.C. § 3307.67(E), the Board does not have unfettered discretion to adjust annual COLAs of retirees participating in the STRS defined benefit plan. Unless the

Board complies with the requirements of said section, it lacks authority to adjust COLAs.

92. The Board's authority to adjust COLAs in O.R.C. § 3307.67(A) arises only upon the fulfillment of specific, stated requirements, and as part of a public process in which affected beneficiaries have an opportunity to be privy to the grounds for any such adjustment and to oppose the same if they wish.

93. The Board failed to provide Plaintiffs and the Class the statutorily required notice and opportunity to be heard regarding the indefinite elimination of cost of living allowances by failing, among other things, to follow the process prescribed by Ohio law – namely, fulfilling the mandatory condition precedent to any Board action to adjust cost of living allowances, that condition being receipt of a determination by the Board's actuary that such adjustment was necessary to preserve the fiscal integrity of the system, in a report provided for in O.R.C. § 3307.51.

94. By circumventing and disregarding the mandatory statutory process for adjusting cost of living allowances, the Board acted unlawfully and deprived Plaintiffs and the Class of their substantial property interest in their retirement benefits (the annual two-percent COLA) without providing them notice of such finding, and an adequate pre-deprivation hearing or other meaningful opportunity to be heard. The Board thereby violated their rights under the Fourteenth Amendment to the United States Constitution.

95. The Board's actions were not random or unpredictable such that pre-deprivation notice and opportunity to be heard was not feasible. Indeed, an Ohio state statute expressly provides for the public filing of the reports required as prerequisites to Board action to adjust COLA benefits.

96. As a direct and proximate result of the Board's unlawful deprivation of

Plaintiffs' and the Class's vested property interest, Plaintiffs and the Class are entitled to damages and all other appropriate relief.

**COUNT 6: VIOLATION OF PROCEDURAL DUE PROCESS
(42 U.S.C. § 1983) (As to the Individual Defendants)**

97. By enacting O.R.C. § 3307.67(A), the General Assembly created an entitlement to annual STRS defined benefit increases.

98. In O.R.C. § 3307.67(E) the General Assembly granted the STRS Board limited authority to adjust annual COLA increases if and only if the Board's actuary, in its annual valuation under O.R.C. § 3307.51 or in other evaluations conducted under that section, determines that such an adjustment does not materially impair the fiscal integrity of the retirement system or is "necessary to preserve the fiscal integrity of the system."

99. Under O.R.C. § 3307.67(E), the Board does not have unfettered discretion to adjust annual COLAs of retirees participating in the STRS defined benefit plan. Unless the Board complies with the requirements of said section, it lacks authority to adjust COLAs.

100. The Board's authority to adjust COLAs in O.R.C. § 3307.67(A) arises only upon the fulfillment of specific, stated requirements, and as part of a public process in which affected beneficiaries have an opportunity to be privy to the grounds for any such adjustment and to oppose the same if they wish.

101. The Individual Defendants, as members of the Board, failed to provide Plaintiffs and the Class the statutorily required notice and opportunity to be heard regarding the indefinite elimination of cost of living allowances by failing, among other things, to follow the process prescribed by Ohio law – namely, fulfilling the mandatory condition precedent to any Board action to adjust cost of living allowances, that condition being receipt of a determination by the Board's actuary that such adjustment was necessary to

preserve the fiscal integrity of the system, in a report provided for in O.R.C. § 3307.51.

102. By circumventing and disregarding the mandatory statutory process for adjusting cost of living allowances, the Individual Defendants acted unlawfully and deprived Plaintiffs and the Class of their substantial property interest in their retirement benefits (the annual two-percent COLA) without providing them notice of such finding, and an adequate pre-deprivation hearing or other meaningful opportunity to be heard. The Individual Defendants thereby violated Plaintiffs' and the Class's clearly established rights under the Fourteenth Amendment to the United States Constitution.

103. The actions of the Individual Defendants were not random, unpredictable, or the result of an emergency of such that pre-deprivation notice and opportunity to be heard was not feasible. Indeed, an Ohio state statute expressly provides for the public filing of the reports required as prerequisites to Board action to adjust COLA benefits.

104. Furthermore, the Individual Defendants failed to follow the process clearly mandated by Ohio law to adjust the annual cost of living adjustment. They made the adjustment without the mandatory condition precedent of receiving a determination by the Board's actuary, in a report prescribed by R.C. Section 3307.51, that such adjustment was necessary to preserve the fiscal integrity of the system.

105. By circumventing and disregarding the mandatory statutory process for adjusting COLA benefits, the Individual Defendants acted unlawfully, under color of state law, and deprived Plaintiffs and the Class of their substantial property interest in their retirement benefits (the annual two percent COLA benefit) without due process of law.

106. As a direct and proximate result of the Individual Defendant's unlawful deprivation of Plaintiffs' and the Class's vested property interest, Plaintiffs and the Class are

entitled to damages and all other appropriate relief.

**COUNT 7: VIOLATION OF SUBSTANTIVE DUE PROCESS
(42 U.S.C. § 1983) (As to All Defendants)**

107. Plaintiffs incorporate by reference the prior paragraphs as if fully stated herein.

108. Defendants' unlawful and arbitrary and capricious decision to indefinitely eliminate the annual two percent COLA benefit owed to Plaintiffs and the Class unreasonably deprived them of their substantial vested property interest in those benefits in violation of their right to substantive due process under the Fourteenth Amendment to the United States Constitution.

109. As a direct and proximate result of Defendant's substantive due process violations unreasonably depriving Plaintiffs and the Class of their substantial vested property interest, Plaintiffs and the Class are entitled to damages and all other appropriate relief.

**COUNT 8: IMPAIRMENT OF CONTRACT
(Ohio Constitution, Article II, Section 28) (As to All Defendants)**

110. Plaintiffs incorporate by reference the prior paragraphs as if fully stated herein.

111. The Board was contractually obligated to provide certain benefits to Plaintiffs and the Class, namely the annual two percent COLA benefit.

112. The Board's unlawful actions on and around April 20, 2017 indefinitely eliminated the annual two percent COLA benefit and has substantially impaired that contract because Defendant is no longer willing or able to honor the terms on which Plaintiffs and the Class reasonably relied. This impairment violates the Contract Clause of the Ohio Constitution.

113. As a direct and proximate result of the Board's impairment of contract, Plaintiffs and the Class are entitled to damages and all other appropriate relief.

COUNT 9: BREACH OF CONTRACT
(Ohio common law) (As to All Defendants)

114. Plaintiffs incorporate by reference the prior paragraphs as if fully stated herein.

115. Upon the vesting of Plaintiffs' and the Class's rights in the STRS, the Board had a contractual obligation under Ohio law to honor the terms of the agreement. Defendant breached this contract on and around April 20, 2017 when the Board unlawfully and indefinitely eliminated the annual two percent COLA benefit, thereby considerably reducing the amount of retirement benefits paid and owed to Plaintiffs and the Class.

116. As a direct and proximate result of Defendant's breach, Plaintiffs and the Class are entitled to damages and all other appropriate relief.

COUNT 10: BREACH OF FIDUCIARY DUTY
(Ohio common law) (As to All Defendants)

117. Plaintiffs incorporate by reference the prior paragraphs as if fully stated herein.

118. By developing, administering, and overseeing the STRS, Defendants accepted a duty to act primarily for the benefit of Plaintiffs and the Class regarding the STRS and the payment of benefits owed.

119. Defendants' actions on and around April 20, 2017 and continuing thereafter, when Defendants unlawfully and indefinitely eliminated the annual two percent COLA benefit without having proper legal authority to do so, breached this duty.

120. As a direct and proximate result of Defendants' breach of fiduciary duty, Plaintiffs and the Class are entitled to damages and all other appropriate relief.

COUNT 11: UNJUST ENRICHMENT
(Ohio common law) (As to All Defendants)

121. Plaintiffs incorporate by reference the prior paragraphs as if fully stated herein.

122. Plaintiffs and the Class conferred a benefit upon the Board by paying certain

amounts of their compensation into the STRS retirement system during their years of employment.

123. The Board was aware of and knew of the benefit conferred by Plaintiffs and the Class.

124. By taking the actions on and around April 20, 2017, when the Board indefinitely eliminated the annual two percent COLA benefit, Defendant retained and continues to retain these benefits under circumstances where it is unjust to do so without payment to Plaintiffs and the Class.

125. Accordingly, Plaintiffs and the Class are entitled to restitution of the reasonable value of the benefit conferred and unjustly retained by Defendant.

COUNT 12: DECLARATORY JUDGMENT ACT
(28 U.S.C. §2201, et seq.)

126. Plaintiffs incorporate by reference the prior paragraphs as if fully stated herein.

127. As described above, on April 20, 2017 the Board acted without lawful authority to indefinitely deprive STRS retirees of annual COLA benefits.

128. Plaintiff's and the Class have a tangible economic interest in ensuring that the Board complies with Ohio law respecting the exercise of control over the STRS and have been materially and negatively affected by the Board's actions.

129. Absent a ruling of this Court, the Board's actions are capable of future repetition in the same or similar situations to the detriment of Plaintiffs and the Class.

130. Declaratory relief finding that the Board acted unlawfully is just and appropriate.

131. In addition, corresponding injunctive relief ordering the Board to make restitution of all amounts wrongfully withheld from Plaintiffs and the Class and enjoining the Board from taking such action in the future without fully complying with applicable law is just and

appropriate. In the absence of such relief, Plaintiffs and members of the Class will be irreparably injured insofar as they are deprived of the current use of the retirement benefits that they earned and to which they contributed during their working careers during vulnerable years of retirement and, in many cases, advanced age.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Dean Dennis and Robert Buerkle, on behalf of themselves and all others similarly situated, hereby demand judgment against Defendants as follows:

a. For a declaration that Defendants' actions as described throughout this Complaint, to the extent it reduces or impairs vested retirement benefits of Plaintiffs and the Class, violates the United States Constitution, the Ohio Constitution, and federal and state laws;

b. For preliminary and permanent injunctive relief enjoining, prohibiting, and preventing Defendants from continuing to ignore its obligation to pay the annual two percent COLA benefit to the extent Defendants' ongoing actions reduce or impair their vested retirement benefits;

c. For an award of damages and/or restitution representing the amount of retirement benefits lost by Plaintiffs and the Class as a result of Defendants' unlawful acts;

d. For an award of interest according to law;

e. For an award of reasonable attorney fees and costs incurred by Plaintiffs and the members of the Class in prosecuting this matter; and

f. For an award of such other relief in law and equity to which Plaintiffs and the Class may be entitled.

JURY DEMAND

Plaintiffs and the Class demand a jury trial for all issues of fact in connection with this

Complaint.

/s/Jeffrey S. Goldenberg

Respectfully submitted,

/s/ Jeffrey S. Goldenberg
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