

<p>DISTRICT COURT, DENVER COUNTY, COLORADO 1437 Bannock Street Denver, CO 80202 Telephone (720) 865-8301</p>	<p>EFILED Document CO Denver County District Court 2nd JD Filing Date: Feb 26 2010 10:18AM MST Filing ID: 29775044 Review Clerk: Stacey Johnson</p>
<p>Plaintiff(s):</p> <p>GARY R. JUSTUS and KATHLEEN HOPKINS, on behalf of themselves and those similarly situated</p> <p>v.</p> <p>Defendant(s):</p> <p>STATE OF COLORADO; PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION OF COLORADO; GOVERNOR BILL RITTER, MARK J. ANDERSON and SARA J. VALT, in their official capacities only.</p>	<p><input type="checkbox"/> COURT USE ONLY <input type="checkbox"/></p> <hr/> <p>Case Number:</p> <p>Courtroom/Division:</p>
<p>Richard Rosenblatt, No. 15813 Richard Rosenblatt & Associates, LLC 8085 East Prentice Avenue Greenwood Village, CO 80111 Phone: (303) 721-7399 x 11 Fax: (720) 528-1220 email: rrosenblatt@cwa-union.org</p> <p>William T. Payne Stephen M. Pincus John Stember Stember Feinstein Doyle & Payne, LLC Allegheny Building, 17th Floor Pittsburgh, PA 15219 Phone: (412) 281-8400 Fax: (412) 281-1007 email: wpayne@stemberfeinstein.com (motions for <i>pro hac vice</i> to be filed)</p>	
<p>CLASS ACTION COMPLAINT</p>	

COME NOW Gary R. Justus and Kathleen Hopkins (collectively "Plaintiffs"), individually and as representatives of the Class of Plaintiffs described below, by and through their attorneys, and assert claims against the above-named Defendants as follows:

PARTIES

1. Plaintiff Gary R. Justus is a Colorado resident who worked for more than 29 years for the Denver Public Schools (“DPS”) before retiring in 2003. Until December 31, 2009, he received his pension through the Denver Public Schools Retirement System (“DPSRS”). On January 1, 2010, DPSRS became part of the Public Employees’ Retirement Association of Colorado (“PERA”). As a result, Mr. Justus now receives his pension benefits from PERA.

2. Plaintiff Kathleen Hopkins is a Colorado resident who worked approximately 15 years for the State of Colorado before retiring in July 2001. Ms. Hopkins currently receives pension benefits from PERA.

3. Defendant State of Colorado is a state that has its capitol in Denver, Colorado. It engaged in the conduct complained of through various agencies and instrumentalities of state government.

4. Defendant Public Employees’ Retirement Association of Colorado is a governmental entity that administers a defined benefit pension plan for Colorado’s public employees. PERA is a “qualified plan” within the meaning of § 401(a) of the Internal Revenue Code. PERA is governed by its Board of Trustees and is headquartered in Denver. Except where noted, the term “PERA” includes the former Denver Public Schools Retirement System.

5. Defendant Bill Ritter is the Governor of the State of Colorado. His office is in Denver. Governor Ritter signed Senate Bill 10-001 into law, and as the state’s chief executive officer he is charged with enforcing it. Governor Ritter is being sued in his official capacity only.

6. Defendant Mark J. Anderson is the Chair of the PERA Board of Trustees. As a PERA Board Trustee, Mr. Anderson is charged with administering PERA pension funds in accordance with state law, including Senate Bill 10-001. Mr. Anderson is being sued in his official capacity only.

7. Defendant Sara R. Valt is the Vice Chair of the PERA Board of Trustees. As a PERA Board Trustee, Ms. Valt is charged with administering PERA pension funds in accordance with state law, including Senate Bill 10-001. Ms. Valt is being sued in her official capacity only.

JURISDICTION and VENUE

8. The District Court for Denver County, State of Colorado has jurisdiction of this action pursuant to Article VI, Section 9, of the Colorado Constitution.

9. Venue is proper in this Court pursuant to Rule 98 of the Colorado Rules of Civil Procedure.

CLASS ACTION ALLEGATIONS

10. Pursuant to Colo. R. Civ. P. 23, the class is defined as:

All individuals currently receiving pension benefits from PERA who became eligible to retire or who retired between March 1, 1994 and February 28, 2010, or who are receiving pension benefits because they are "survivors" of such retirees.

11. To aid in the management of this case, the Class should be divided into the following subclasses:

Public Employee Subclass – PERA members in the School, State, Local Government and Judicial Divisions.

DPS Subclass – PERA members in the Denver Public School Division.

12. Because there are approximately 100,000 members of the Class joinder of all members is impracticable. A class action is the most efficient means of adjudicating these claims and will conserve the resources of this Court and the parties.

13. There are common questions of law and fact that relate to and affect Class Members, namely, whether Defendants had authority to alter long-promised annual increases in pension benefits after the right to these yearly increases vested.

14. Given the common pattern of conduct by Defendants (along with the common theories for redressing it), this case should be maintained as a class action pursuant to Rules 23(b)(2) and/or 23(b)(1) of the Colorado Rules of Civil Procedure.

15. Plaintiffs are committed to and have the resources to vigorously prosecute this action. Plaintiffs have retained competent counsel who are experienced in litigating class actions involving retiree benefits and civil rights violations. Neither the Plaintiffs nor Plaintiffs' counsel have any interest that conflicts with or is adverse to the Class or that might lessen their zeal in pursuing this action.

16. The claims of the named Plaintiffs are typical of the claims of the Class, and Plaintiffs have the same interest as the other members of the Class.

17. Plaintiffs are adequate representatives of the Class and will fairly and adequately protect the interests of the Class.

18. This action is properly maintained as a class action under Colo. R. Civ. P. 23(b)(2), in that Defendants have acted on grounds generally applicable to the class by unilaterally reducing the annual pension increase they were obligated to provide to Class

Members, thereby making final injunctive relief or declaratory relief appropriate for the class as a whole.

19. Alternatively, this action is maintainable as a class action under Colo. R. Civ. P. 23(b)(1). Because the Contract Clauses of both the United States and Colorado Constitutions establish uniform standards that Defendants must observe, prosecution of separate actions by individual members of the class would create a risk of: (i) inconsistent adjudications that would establish incompatible standards of conduct for Defendants; and (ii) adjudications that would be dispositive of the interests of non-party class members or substantially impair such non-party class members' ability to protect their interests.

FACTUAL ALLEGATIONS

A. Public Pension Benefits Vest When An Employee Becomes Eligible To Retire

20. Colorado courts recognize that a public pension is part of the employment contract between a public employee and his or her government employer, and that the right to a pension is a material inducement for a public employee to remain in the public sector. See Police Pension and Relief Board of City and County of Denver v. McPhail, 139 Colo. 330 (1959).

21. In Police Pension and Relief Board of City and County of Denver v. Bills, 148 Colo. 383 (1961), the Colorado Supreme Court held that after a public employee begins work, but before he attains retirement eligibility, the terms of his pension benefit can be modified—but only “if these changes strengthen or better it, or if they are actuarially necessary.” Id. at 390.

22. After a public employee attains eligibility for retirement or actually retires, his pension benefits may not be diminished unless he receives a comparable improvement in these benefits as well. Id. Accordingly, the Court in Bills found that the Denver Pension Board was obligated to provide an increase in pension benefits that was specified in the City and County Charter and in an Ordinance, both of which were in effect when plaintiffs became eligible to retire or actually retired. Id.

23. For the last 50 years, Colorado courts have consistently held that once a public employee's right to a pension has vested the state is without authority to diminish it.

24. In 2004, then-Attorney General Ken Salazar issued a formal opinion regarding whether the General Assembly had authority to alter the pension benefits of PERA members. The Attorney General wrote:

PERA retirement benefits become a vested right when an employee has complied with the statutory conditions entitling the employee to the receipt of retirement benefits. . .

Some vested pension rights cannot be eliminated. When a PERA member retires from active service and begins receiving a pension, the member's pension becomes a vested contractual obligation of the pension program that is not subject to unilateral change of

any type by the General Assembly. . . . When an employee retires and begins receiving a pension, trustees may not adopt an amendment that reduces an employee's vested pension under the plan.

Attorney General Formal Opinion No. 05-04, pp. 2-3 (citations omitted).

B. The Annual Increases To PERA Pensions

25. Plaintiffs and Class Members have spent all or the majority of their working lives in public service. Class Members include, among other public employees, retired public safety personnel who protected Coloradans from fire and crime; retired public school teachers who taught millions of Colorado's children; retired state judges who interpreted and enforced the laws of Colorado; and retired state and local government workers who ensured the proper functioning of all sectors of Colorado government.

26. The retirement benefits that Plaintiffs and Class Members were long promised under PERA constituted an integral and significant part of their compensation for public service.

27. For most public employees, PERA substitutes for Social Security since they will not receive Social Security benefits for the time they worked in government service.

28. The benefits administered by PERA are funded by contributions from each and every participating public employee and the governmental entities that employ them. PERA members are required by law to contribute at least 8% of their wages to PERA.

29. By making the requisite contributions to PERA and attaining the age and service credit required for retirement, public employees acquire vested rights to PERA pensions. Informational materials prepared by PERA acknowledge that since 1931 PERA has been "providing public employees with outstanding **guaranteed** retirement benefits." "Information for New PERA Members," revised February 2002 (emphasis added).

30. At all times relevant to this case, the state law governing PERA and the DPSRS pension plan itself mandated an annual increase to pension benefits, either by way of a cost of living adjustment (COLA) or a guaranteed percentage adjustment.

31. As explained above, the pension benefits of public employees vest when they become eligible to retire or when they actually retire. Thereafter, PERA is contractually obligated to provide its members with pension benefits at the levels that were specified by law – including any COLAs or other annual increases – when the benefits vest.

32. Prior to March 1, 1994, the law pertaining to PERA provided that "cost of living increases in retirement benefits and survivor benefits shall be made only upon approval by the general assembly." Colo. Rev. Stat. § 24-51-1101 (1992).

33. In 1993, the Legislature amended the PERA statute effective March 1, 1994, such that thereafter annual COLA increases were automatic and no longer required yearly approval by the General Assembly. H.B. 93-1324, § 7 (1993).

34. As a consequence of the 1993 amendment, from 1994 through 2000, the pension benefits of PERA retirees were automatically adjusted upward by a COLA determined under the formula specified in the statute and which yielded the following percentages:

Year	Increase
1994	2.82%
1995	2.53%
1996	2.84%
1997	2.91%
1998	2.22%
1999	1.34%
2000	2.23%

35. In 2000, the Legislature amended the PERA statute again, this time replacing the annual COLA adjustment with a guaranteed 3.5% annual increase effective March 1, 2001. Laws 2000, Ch. 186, § 7; Colo. Rev. Stat. § 24-51-1002 (2009).

36. The DPSRS pension plan provided DPS retirees with a guaranteed yearly COLA or a 3.25% annual increase. When DPSRS became part of PERA, PERA assumed DPSRS' obligation to provide the guaranteed 3.25% annual increase in the pension benefits of DPS Subclass Members. Colo. Rev. Stat. § 24-51-1732 (effective January 1, 2010).

C. Senate Bill 10-1001

37. In 2000, PERA was at 105% of its funding level.

38. Citing underfunding that developed after 2000, the Legislature recently passed Senate Bill 10-001, which Governor Ritter signed into law on February 23, 2010.

39. Senate Bill 10-001 modified PERA in several aspects. Among other things, it increased employer and employee contributions; changed service eligibility requirements for PERA members hired after January 1, 2011; and changed the formula for calculating the Highest Average Salary for PERA members who were not eligible to retire as of January 1, 2011.

40. Senate Bill 10-001 also eliminated the guaranteed 3.5% annual increase for PERA retirees not in the DPS Division and the 3.25% annual increase for DPS retirees, and replaced these with an annual COLA to be calculated under a new formula and which is capped at 2%. SB 10-001, § 20.

41. Under the COLA formula in Senate Bill 10-001, all PERA retirees will receive no COLA increase at all for 2010.

42. Senate Bill 10-001 also provides that if PERA's investments yield a negative annual return in 2012 or any year thereafter, this will trigger a 3-year period of further downward adjustments to the COLA. SB 10-1001, § 20.

43. Defendants did not limit the application of the changes to pension benefits mandated by Senate Bill 10-001 to new hires or public employees not yet eligible to retire. Instead, Defendants applied these amendments retroactively to all PERA members, including those, like Plaintiffs and members of the Class, whose rights to pension benefits had vested before March 1, 2010, the effective date of the Act.

44. Due to the 2% cap on the COLA, Plaintiffs and Class Members will receive pensions that will be substantially less than the benefits that were specified by law when their pension rights vested or when they actually retired.

45. The following chart demonstrates the impact of the change from a guaranteed 3.5% yearly adjustment to a 2% cap on the annual COLA over a twenty-year period. The example in the chart is based on a hypothetical Class Member who in 2009 received \$33,264 in pension benefits (\$33,264 was the average yearly benefit in 2008):

Year	3.5% increase	2.0% COLA (0% in 2010)
2010	\$34,428.24	\$33,264.00
2011	\$35,633.23	\$33,929.28
2012	\$36,880.39	\$34,607.87
2013	\$38,171.21	\$35,300.02
2014	\$39,507.20	\$36,006.02
2015	\$40,889.95	\$36,726.14
2016	\$42,321.10	\$37,460.67
2017	\$43,802.34	\$38,209.88
2018	\$45,335.42	\$38,974.08
2019	\$46,922.16	\$39,753.56
2020	\$48,564.43	\$40,548.63
2021	\$50,264.19	\$41,359.60
2022	\$52,023.43	\$42,186.80
2023	\$53,844.25	\$43,030.53
2024	\$55,728.80	\$43,891.14
2025	\$57,679.31	\$44,768.96
2026	\$59,698.09	\$45,664.34
2027	\$61,787.52	\$46,577.63
2028	\$63,950.08	\$47,509.18
2029	\$66,188.34	\$48,459.37

46. As a result of Defendants' application of Senate Bill 10-001, this hypothetical "average" retiree will lose more than \$165,000 in benefits over the next twenty years.

47. In addition to eliminating the 3.5% and 3.25% annual increases, Senate Bill 10-001 also pushed back the date of the annual adjustments. Prior to the most recent amendments, yearly upward adjustments were made on March 1st of each year (January 1st for DPS retirees); going forward, adjustments are to be made on July 1st, thus reducing the benefits even more. SB 10-001, § 19.

COUNT I

(Declaratory Relief: Seeking a Judicial Determination that Sections 19 and 20 of Senate Bill 10-001 violate the Contract Clauses of the United States and Colorado Constitutions)

48. Plaintiffs repeat and reallege the allegations contained in the preceding paragraphs and incorporate them by reference.

49. Article 1, Section 10 of the United States Constitution declares that "[n]o state shall...pass any...law impairing the obligations of contracts..."

50. Article 2, Section 11 of the Colorado Constitution instructs: "No *ex post facto* law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges, franchises or immunities, shall be passed by the general assembly."

51. As explained above, Defendants have a contractual obligation to provide pension benefits to Plaintiffs that is cognizable under the Contract Clauses of the United States and Colorado Constitutions.

52. The Contract Clauses of the United States Constitution and the Colorado Constitution forbid the State from enacting laws that adversely affect vested pension benefits of public employees.

53. The provisions of the former Colo. Rev. Stat §§ 24-51-1001 and 24-51-1002 are terms of a binding contract between the State of Colorado and the Public Employee Subclass Members.

54. The obligations of the DPSRS to make annual adjustments to the pensions of DPS retirees have been assumed by the State of Colorado through PERA (see Colo. Rev. Stat. § 24-51-1732) and are terms of a binding contract between the State of Colorado and DPS Subclass Members.

55. Plaintiffs' pension benefits vested by virtue of contributing to PERA or DPSRS throughout their many years of service and by satisfying the PERA or DPSRS eligibility rules and regulations.

56. The named Plaintiffs are entitled to benefits at the levels specified by law when their pension rights vested or when they actually retired.

57. Sections 19 and 20 of Senate Bill 10-001 violate the contractual rights of Plaintiffs and Class Members to annual adjustments of their pensions at the levels and in the manner specified by the law when their pension rights vested or when they actually retired.

58. Because Sections 19 and 20 of Senate Bill 10-001 diminish the benefits of PERA members whose rights to a pension in a greater amount had previously vested, Defendants have violated the Contract Clauses of the Constitutions of the United States and the State of Colorado.

59. Colo. Rev. Stat. § 13-51-106 accords any person whose rights, status or other legal relations are affected by a statute the right to have a court determine the validity of such law and to obtain a declaration of his rights, status, or other legal relations thereunder.

COUNT II

Violation of 42 U.S.C. Sec. 1983

(Against Individual Defendants in their official capacities only)

60. Plaintiffs repeat and reallege the allegations of preceding paragraphs of this pleading and incorporate them by reference.

61. As explained above, Defendants are contractually obligated to provide Plaintiffs and the Class with an annual increase in pension benefits at the levels and in the manner specified by law when their pension rights vested or when they actually retired.

62. By applying Sections 19 and 20 of Senate Bill 10-001 to PERA members whose pension rights had already vested, Individual Defendants have breached the Plaintiffs' contractual rights.

VI. RELIEF REQUESTED

WHEREFORE, the Plaintiffs request that this Court order the following relief:

- A. Assume jurisdiction of this case;
- B. Enter a declaratory judgment pursuant to Colo. Rev. Stat. § 13-51-105, finding that Sections 19 and 20 of Senate Bill 10-001 violate the Contract Clauses of the United States and Colorado Constitutions;
- C. Issue a permanent injunction, pursuant to Colo. Rev. Stat. § 13-51-112, barring implementation of Sections 19 and 20 of Senate Bill 10-001;
- D. Certify the proposed Class pursuant to Colo. R. Civ. P. 23;

E. Issue an order appointing Richard Rosenblatt and Associates, LLC and Stember Feinstein Doyle & Payne LLC as counsel for the class;

F. Award monetary damages, pursuant to Colo. Rev. Stat. § 13-51-112, to the Plaintiffs and Class Members (plus interest) as appropriate to restore them to the positions in which they would have been but for the application of Sections 19 and 20 of Senate Bill 10-001;

G. Award attorney fees and costs incurred in this action pursuant to 42 U.S.C. § 1988 and/or as available under State law or otherwise; and

H. Issue such other relief as the Court deems just and proper.

Dated: February 26, 2010

Respectfully submitted,

By: /s/Richard Rosenblatt
Richard Rosenblatt, #15813
Richard Rosenblatt & Associates, LLC

William T. Payne, Esq.
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(motions for *pro hac vice* to be filed)

On behalf of Plaintiffs,
Gary R. Justus and Kathleen Hopkins and
others similarly situated