Stuart Buck
Director of Research, Laura and John Arnold Foundation

Pension Reform in the Face of Legal Challenges
pension reform = payday for lawyers
50+ Lawsuits in last 4 years

red = at least one lawsuit against the state or a city within that state
Developments Since Last Year’s Pension Litigation Talk

1. Florida Supreme Court’s approval of contribution increases
2. Plaintiffs’ increasing reliance on non-contractual arguments (labor law, enactment requirements)
3. Use of poison pill in pension reform initiatives
4. HUGE unresolved question: pensions vs. Bankruptcy law
1. Florida
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2011 reform raised employee contribution rates to 3% (from zero). Side note: employee contributions make no sense under federal tax law.

Also reduced COLAs.
1. Florida

Trial judge ruled in March 2012 that raising contribution rates was unlawful, because it changed “the fundamental nature of the plan itself.”
Florida Supreme Court reversed on Jan. 17 of this year.

Under prior Florida Supreme Court precedent, the legislature is allowed to "alter retirement benefits prospectively."

"To hold otherwise would mean that no future legislature could in any way alter future benefits of active employees for future services, except in a manner favorable to the employee. This view would, in effect, impose on the state the permanent responsibility for maintaining a retirement plan which could never be amended or repealed irrespective of the fiscal condition of this state. Such a decision could lead to fiscal irresponsibility. It would also impose on state employees an inflexible plan which would prohibit the legislature from modifying the plan in a way that would be beneficial to a majority of employees, but would not be beneficial to a minority."
2. Non-contractual arguments

Two examples of this
2. Non-contractual arguments
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Louisiana law enacted 6/25/2012 – cash balance plan for new employees
2. Non-contractual arguments

State trial court struck down on 1/25/2013
2. Non-contractual arguments

Louisiana Supreme Court affirmed on 6/28/2013
2. Non-contractual arguments

Louisiana Constitution provides that benefit changes "having an actuarial cost" must have 2/3rds legislative approval, which this law did not. Even though there were contrasting actuarial opinions, the Legislature was required to follow the opinion of the official legislative auditor authorized by the Louisiana Constitution.
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Voters of San Diego and San Jose enacted pension reform via ballot initiative.
2. Non-contractual arguments

In both cities, unions have gone to a California state agency charged with enforcing state labor law: the Public Employment Relations Board.

Complaint: Ballot initiatives did not engage in the collective bargaining process with public employee unions.
2. Non-contractual arguments

San Jose: no ruling yet.
San Diego: preliminary ruling from ALJ holding that the ballot initiative was really sponsored by the mayor, who therefore violated his collective bargaining requirement.
3. Poison pill

San Jose’s ballot initiative had a unique feature:
If the main pension reforms are struck down, employees will face up to a 4% salary cut per year (up to 16% total) to go towards unfunded liabilities.
3. Poison pill

Interesting dilemma . . .
State courts, including California, uniformly hold that salaries are within the discretion of the government.

Does it make sense for state courts to be rigid about future pension accrual patterns when the employers can just cut salaries instead?

How does that make employees better off?
4. Bankruptcies vs. Pensions

Central Falls, Rhode Island

Went bankrupt in 2011.
Ended up cutting pension payments to retirees by 30 to 55%.
4. Bankruptcies vs. Pensions

Stockton, California

City has not attempted to cut pension payments to CalPERS.
City creditors (bond-holders) have viciously disagreed.
No decision on the issue yet.

Federal court transcript from April 1, 2013:
Judge: “Bankruptcy is nothing but the impairment of contracts. I've been doing this job for more than 25 years. I've had more than 138,000 bankruptcy cases. I've been party to impairment of millions of contracts and it’s all constitutional. . . . [A] parallel contracts clause in the state constitution must give way to the Bankruptcy Code, to the power of the Congress under the Supremacy Clause of the Constitution.”
4. Bankruptcies vs. Pensions
4. Bankruptcies vs. Pensions

Detroit:
Declared bankruptcy.
3 state court lawsuits attempting to enjoin the federal bankruptcy.
Trial court judge issued TRO.
Quickly reversed by state court of appeals.
Federal bankruptcy judge will address the issue at some point.
The End