

IN THE SUPREME COURT OF THE STATE OF OREGON

EVERICE MORO, TERRI DOMENIGONI, CHARLES CUSTER, JOHN
HAWKINS, MICHAEL ARKEN, EUGENE DITTER, JOHN O'KIEF,
MICHAEL SMITH, LANE JOHNSON, GREG CLOUSER, BRANDON
SILENCE, ALISON VICKERY, and JIN VOEK
Petitioners,

v.

STATE OF OREGON, STATE OF OREGON by and through the
Department of Corrections, LINN COUNTY, CITY OF PORTLAND, CITY
OF SALEM, TUALATIN VALLEY FIRE & RESCUE, ESTACADA
SCHOOL DISTRICT, OREGON CITY SCHOOL DISTRICT, ONTARIO
SCHOOL DISTRICT, BEAVERTON SCHOOL DISTRICT, WEST LINN
SCHOOL DISTRICT, BEND SCHOOL DISTRICT, and PUBLIC
EMPLOYEES RETIREMENT BOARD,
Respondents,

and

LEAGUE OF OREGON CITIES; OREGON SCHOOL BOARDS
ASSOCIATION; CENTRAL OREGON IRRIGATION DISTRICT; and
ASSOCIATION OF OREGON COUNTIES,
Intervenors.

S061452 (Control)

WAYNE STANLEY JONES,
Petitioner,

v.

PUBLIC EMPLOYEES RETIREMENT BOARD, ELLEN ROSENBLUM,
Attorney General and JOHN A. KITZHABER, Governor,
Respondents.

S061431

MICHAEL D. REYNOLDS,
Petitioner,

v.

PUBLIC EMPLOYEES RETIREMENT BOARD, State of Oregon; and
JOHN A. KITZHABER, Governor, State of Oregon,
Respondents.

S061454

GEORGE A. RIEMER,
Petitioner,

v.

STATE OF OREGON; OREGON GOVERNOR JOHN KITZHABER;
OREGON ATTORNEY GENERAL ELLEN ROSENBLUM; OREGON
PUBLIC EMPLOYEES RETIREMENT BOARD; and OREGON PUBLIC
EMPLOYEES RETIREMENT SYSTEM,
Respondents.

S061475

GEORGE A. RIEMER,
Petitioner,

v.

STATE OF OREGON; OREGON GOVERNOR JOHN KITZHABER;
OREGON ATTORNEY GENERAL ELLEN ROSENBLUM; OREGON
PUBLIC EMPLOYEES RETIREMENT BOARD; and OREGON PUBLIC
EMPLOYEES RETIREMENT SYSTEM,
Respondents.

S061860

BRIEF AMICUS CURIAE OF AARP IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS CURIAE

AARP is a nonprofit, nonpartisan membership organization that helps people turn their goals and dreams into real possibilities, seeks to strengthen communities and fights for the issues that matter most to families such as healthcare, employment and income security, retirement planning, affordable utilities and protection from financial abuse. In its efforts to foster the economic security of individuals as they age, AARP seeks to increase the availability, security, equity, and adequacy of public and private pension, health, disability and other employee benefits which countless members and older individuals receive or may be eligible to receive.

Defined benefit pensions are of vital concern to workers of all ages, and to retirees, as the quality of workers' lives in retirement, particularly for life-long public servants, depends greatly on the amount of their retirement pension and welfare benefits. Cost-of-living adjustments (COLAs), which adjust benefit payments by accounting for inflation, significantly affect retirees' purchasing power, particularly for those who are unable to supplement their incomes due to disability or advanced age. COLAs are therefore, of the utmost importance for aging adults, as even the most modest rate of inflation can significantly erode pensioners' purchasing power over time.

The Oregon Public Employment Retirement System (PERS) was significantly modified by recent legislation (Senate Bills 822 and 861) from the Oregon Legislature's 2013 regular session that drastically scaled back COLAs for PERS current retirees and soon-to-be retirees. Individuals affected by these changes to PERS are forced by the challenged legislation to bear reductions in COLAs, which threatens their economic security as they age. Accordingly, resolution of the issues in this case will have a direct and vital bearing on Oregon PERS retirees' ability to maintain their standard of living after retirement. In light of the significance of the issues presented by this case, AARP respectfully submits this brief, as *amicus curiae*, to facilitate a full consideration by the Court on the issue of the lawfulness of COLA reductions implemented under SB 822 and SB 861.

SUMMARY OF ARGUMENT

Recent PERS COLA reforms fail to take sufficient account of the long-term impact of the changes on the wellbeing of current and future retirees and their dependent beneficiaries for whom their pension income is the foundation of their economic security. Too little weight has been given by the Oregon Legislature to the fact that by and large, the pensioner population tends not to be working. Pensioners generally have unique financial needs and circumstances when compared to

actively employed individuals. Economic insecurity among pensioners has considerable non-economic implications that ripple into the realm of emotional and physical wellbeing.

Reform that fails to give consideration to the fact that older Americans spend a larger share of their income on health expenditures and that the costs of these health expenditures have risen over the years is deeply flawed. In light of all of the special characteristics of the pensioner population, COLA reductions pose undue burdens on already fragile retirements. PERS COLA reductions for current retirees and soon-to-be retirees constitute an ill-considered breach of a special obligation by the State of Oregon.

ARGUMENT

I. THE ECONOMIC IMPACT ON RETIREES CAUSED BY SEVERE CURTAILMENT OF COST-OF-LIVING ADJUSTMENTS (COLAS) IS FAR REACHING.

A. Reductions in COLAs negatively impact purchasing power of PERS members, irrespective of income level.

Retirees today face a symphony of rising costs—including skyrocketing medical expenses—but far too often have fewer resources to cover all of their needs. Press Release, AARP, AARP Releases Data Showing Impact Of Recession On Soc. Sec. Recipients Facing No COLA in 2009 (Sept. 22, 2009) (<http://bit.ly/1lb5fc2>) (discussing impact of the economic recession on Social Security recipients facing no COLA

in 2009). When cost-of-living expenses increase while income remains relatively stagnant—due to insufficient adjustments for inflation—adequate retirement benefits quickly become inadequate, as purchasing power steadily declines over time. See *NRTA Pension Education Toolkit: Cost of Living Adjustments (COLAs)*, AARP & Nat'l Inst. on Ret. Sec., 1-2, available at <http://bit.ly/1IF3NOM> (last visited June 18, 2014); accord *Cost-of-Living Adjustments: What They Are And Why They Matter*, 360Financialliteracy.org, <http://bit.ly/1pnmnwj> (last visited June 19, 2014).

COLAs allow retirees to cover increased costs associated with their most basic living expenses, and, just as importantly, such adjustments allow retirees to live with dignity and sustain their chosen standard-of-living.

It must be remembered that annual COLAs do not represent a raise to PERS members' pension benefits. Rather, they are a manifestation of the system's commitment to maintain the purchasing power of pension incomes over time. Without adequate COLAs the value of PERS pensions and retired members' standard-of-living is certain to be eroded by rising prices. A reduced COLA sets into motion the same dynamic of erosion of purchasing power.

B. Lower Income Pensioners with Reduced Purchasing Power Will Struggle to Make Ends Meet Amidst a Rising Cost-of-Living.

Public sector retirees have very little savings, and are often unable to supplement their income due to old age or disability. See *Get The Facts: Why are Pensions So Important*, Pensions Rights Ctr., <http://bit.ly/1qsXvVP> (last visited June 17, 2014).^{1 2} It follows that decreases in COLAs have a detrimental impact on the economic wellbeing of older and disabled Americans and their family members who receive benefits from the PERS system. These reductions essentially amount to benefit cuts for PERS members who are least able to afford them. As the purchasing power of these lower income public servants decreases, under the 2013 PERS Legislation, current and future retirees will be left to choose between use of income to cover immediately necessary expenses, such as those associated with food or

¹ Statistics reveal that as Americans age, they carry growing debt. Over the past 20 years, Americans age 75 plus had a larger increase in average debt than any other age group. From 1989 to 2010, average total debt for age 75 plus increased 529 percent. Average mortgage debt increased by 812 percent and mean credit card debt increased by 813 percent. *Adopting A Chained CPI Targets The Oldest, Poorest Americans: The Longer You Live, The More Social Security You Lose*, Fact Sheet 270 AARP PPI (Nov. 2012), available at <http://bit.ly/1t1e2IV>.

² Health care costs also continue to rise as Americans age. The median out-of-pocket health care costs for people age 85 plus is 28 percent of income, compared to 11 percent for those age 65-69. Claire Noel-Miller, *Medicare Beneficiaries' Out-of-Pocket Spending For Health Care*, Insight on Issues 65 AARP PPI 1, 3 (May 2012), available at <http://bit.ly/1rk96H4>.

healthcare, and less pressing, but, equally important expenses, such as those associated with transportation or social interaction. See 360Financialliteracy.org, *supra* (discussing inadequate purchasing power of retirees with no COLAs).

The financial pressures facing many Oregon PERS pensioners are compelling. For example, Mr. Terri Domenigoni, a retired elementary school teacher, is projected to lose over a hundred thousand dollars in expected pension payments over the course of his life due to inadequate COLAs mandated under the 2013 PERS Legislation. See Spec. Master's Preliminary Rep. And Recommended Findings Of Fact (hereinafter Spec. Masters Rep.), p. 57 (2014) (No. S061452). Mr. Domenigoni has less than \$23,200 in annual benefits, placing him unsettlingly close to the federal poverty line. See U.S. DEPT. HHS, 2014 POVERTY GUIDELINES, <http://1.usa.gov/1fbiMbN> (noting the federal poverty level for a household of two is \$15,730). Cuts in COLAs perilously dangle Mr. Domenigoni below the federal poverty line, forcing him to choose between paying for the increasing costs associated with his life-sustaining medical care and the costs of enjoying simple habits essential to a healthy lifestyle, like local transportation and social interaction. See Ray Long, *Pension Reform Could Hit Oldest Retired Teachers The Hardest*, Chi. Tribune (Feb. 13, 2013),

<http://trib.in/1o06N8C> (noting that retirees with smallest pensions are often impacted most severely with cuts in annual COLAs).

Further, with “PERS staff estimates that COLA changes will result in \$60 to \$70 million in projected benefits not being paid through 2015,” Oregon PERS members with insufficient retirement income – particularly for those who are unable to find suitable employment options after retirement – would inevitably turn to public assistance to help meet their most basic living needs. See Spec. Master’s Rep., *supra*, at 36; see also Frank Porell and Beth Almeida, *The Pension Factor: Assessing The Role Of Defined Benefit Plans In Reducing Elder Hardships*, Nat’l Inst. on Ret. Sec. 1, 8-10 (July 2009), *available at* <http://bit.ly/1stlzse> (noting that cuts in COLA will create, or contribute to, the inability of many retired adults from meeting their basic expenses associated with shelter, medical and dental expenses and adequate food consumption). Thus providing adequate COLAs and keeping seniors such as Mr. Domenigoni above the federal poverty line benefits the State just as much as it would the individual pensioner. See Porell and Almeida, *supra*, at 11-12, 14 (noting that “pensions help 4.7 million Americans avoid poverty, and that households receiving adequate pension income are much less likely to rely on public assistance”).

C. Detrimental Consequences of COLA Reductions Are Not Limited to Lower Income Pensioners

Pensions—when properly adjusted for cost-of-living increases—offer retirees’ income security. A reduction in the COLA rate for PERS members threatens to undermine the foundation of economic security of current and future public servants of all income levels in Oregon.

Notably, higher income PERS pensioners are just as much at risk of losing their standards-of-living, if not more, as a result of the 2013 PERS Legislation as those receiving under \$60,000 in yearly pension benefits. See Alicia H. Munnell et al., *Is There Really A Ret. Savings Crises? An NRRRI Analysis*, Ctr. For Ret. Research at Bos. Coll. No. 7-11, at 1 (Aug. 2007), *available at* <http://bit.ly/1pQLb1m> (citing national research that shows 45% of all households, irrespective of income, are at risk of being unable to maintain their living standards in retirement, even if they work to age 65, plan to consume all their financial assets, and take out reverse mortgages to monetize their housing wealth).

Further, higher-income individuals can –similar to lower-income pensioners-live paycheck-to-paycheck, as many aging Americans carry growing debt and face rapidly increasing medical care costs. See *Adopting A Chained CPI Targets The Oldest, Poorest Americans: The Longer You Live, The More Social Security You Lose*, *supra*, n.1, and Noel-Miller, *supra*, n.2; accord Chris Lehman, *Pension Adjustments*

Would Bring Mixed Impact to Or. Retirees, NW News Network (Mar. 11, 2013), <http://bit.ly/1nkFG4T> (discussing the inability of an Oregonian retiree—who is caring for both his family and a brother with chronic health problems—to make ends meet with a yearly pension benefit above \$60,000 that places him amongst retirees hit the hardest by COLA cuts mandated under the 2013 PERS Legislation).

Clear deprivation of PERS members' ability to live a life with dignity and maintain their living standards is demonstrated by comparing the effect of the 2013 PERS Legislation on two of the petitioners in this case. Mr. Eugene Ditter is a retired apparatus operator and paramedic and has just over \$72,000 in annual benefits (based on Mr. Ditter's gross monthly benefit estimate of around \$6,000 in the Spec. Master's Rep.). See Spec. Master's Rep., *supra*, at 60-61. Mr. Ditter is projected to lose over half a million dollars in earned pension benefits over the course of his lifetime due to slashed COLAs mandated by the 2013 PERS Legislation. See Spec. Master's Rep., *supra*, at 61. When compared to Mr. Domenigoni (discussed *supra*), Mr. Ditter has about three times the projected pension Mr. Domenigoni will receive, yet he will be losing five times the benefits over the course of his lifetime as a result of the 2013 PERS Legislation.

This shocking disparity in loss of purchasing power due to insufficient adjustments for inflation demonstrates that higher income Oregonian PERS retirees-as compared to those receiving under \$60,000 in annual benefits-are equally, if not more, deprived of their right to live their lifestyle due to the 2013 PERS Legislation.

II. THE IMPACT ON RETIREES CAUSED BY SEVERE CURTAILMENT OF COST-OF-LIVING ADJUSTMENTS (COLAS) GOES BEYOND ECONOMICS.

A. Cuts in COLAs Lead to Increasing Incidences of Isolation Among Retirees.

Generally, as economic times worsen for individuals so too does their psychological state. See Victoria Furness, *Impact of Econ. Downturn On Psychological Contract Between Employer And Employee*, EmployeeBenefits.co.uk (Nov. 1, 2008), <http://bit.ly/1izHxa0> (discussing the link between times of economic downturn and increased feelings of vulnerability and fear for the future). Americans are currently facing the most substantial economic downturn since the Great Depression. See Jesse Bricker et al., *Changes In U.S. Family Finances From 2007 to 2010: Evidence From The Survey Of Consumer Finances*, 98 Federal Reserve Bulletin 1, 4 (June 2012), *available at* <http://1.usa.gov/1iYqY7T>. With scarce savings reserves, the oldest Americans are the least able to absorb cuts to their benefits as they are more reliant on pension sources for their income, have higher out-of-pocket medical spending, and a

higher poverty rate than younger Americans. See Federal Reserve Board, *2010 Survey of Consumer Finances Chartbook* (July 19, 2012), available at <http://1.usa.gov/1kWsF4n> (noting that In 2010, two out of three families headed by a person age 75 or older had no money in retirement savings accounts; half of those with savings had less than \$54,000). As a result of the 2013 PERS Legislation, more and more Oregonians will be forced to cut back on activities in their lives that they deem inessential, such as social events or outings. Such habit changes are likely lead to feelings of loneliness or even social isolation. See Robert F. Creecy, *Loneliness Among the Elderly: A Casual Approach*, 40 J. Gerontology 487 (1985) (discussing a study of non-institutionalized elderly adults that found “income, social activity levels, and a sense of social fulfillment directly predict feelings of loneliness”).

B. Reductions in Lifestyle Lead to Depression.

Deterioration in the value of one’s base income, leaving many unable to sufficiently maintain their pre-2013 legislation lifestyles, will lead to deteriorating psychological states amongst PERS retirees. See Maria Averina et al., *Social And Lifestyle Determinants Of Depression, Anxiety, Sleeping Disorders And Self-Evaluated Quality Of Life In Russia--A Population-Based Study In Arkhangelsk*, 40 Soc. Psychiatry

and Psychiatric Epidemiology 511 (Jan. 28, 2005) (finding low quality of life to be associated with depression).

Unsurprisingly, psychological health is essential to living well in old age. Various studies—that have investigated the relationship between loneliness, health and depression—have found links between social isolation and depression. See Alpass and Neville, *Loneliness, Health And Depression In Older Males*, 7 Aging Mental Health 212 (May 2003) (noting that loneliness and social isolation, particularly in the older adult, have been shown to influence individuals' psychosocial well-being, most notably in the area of depression); see also George S. Alexopoulos, *Depression In The Elderly*, 365 The Lancet 1961 (June 2005) (finding social isolation contributes to the susceptibility of depression in the elderly). Thus, any feelings of social isolation prompted by the 2013 PERS Legislation, could lead to diagnosable illnesses such as depression. See Kimberly A. Williams and Michael B. Friedman, *Addressing The Mental Health Needs Of Older Adults In “Age Friendly Communities”*, Geriatric Mental Health Alliance of New York, 1 (Jan. 2010), available at <http://bit.ly/1o0eKcl>.

C. Depression and Beyond: Worsening Psychological Wellbeing Leads to Worsening Physiological Health for Retirees.

Depression affects more than 6.5 million Americans above the age of 65. Ken Duckworth, *Depression in Older Persons Fact Sheet*, Nat'l Alliance On Mental Illness (Oct. 2009), *available at* <http://bit.ly/1hrMM4e>. Over the years depression has been tied to a variety of factors, including changes in financial expectations of retirees. One study—centered in the Netherlands—tested more than 5,200 workers for depression and found sudden changes in pension distribution announced with very short notice, was linked to higher bouts of depression. See Andries De Grip et al., *Shattered Dreams: The Effects of Changing The Pensions Sys. Late In The Game*, 122 *The Econ. J.* 1, 6, 22 (Nov. 28, 2011), *available at* <http://bit.ly/1iTB21Q> (noting that cuts in Dutch pensions, produced feelings of differential treatment and a loss of control that increased the incidence of depression among workers who were adversely affected).

Depression has also been linked to more serious conditions such as heart disease and even death. Dominique L. Musselman et al., *The Relationship Of Depression To Cardiovascular Disease: Epidemiology, Biology, And Treatment*, 55 *JAMA Psychiatry* 580, 583 (July 1998), *available at* <http://bit.ly/1r7S8M6> (noting that depression is a major risk factor for both the development of cardiovascular disease and death

after development); see also, Carlos F. Mendes De Leon et al., *Depression And Risk Of Coronary heart Disease In Elderly Men and Women*, 158 JAMA Int'l Med. 2341, 2345 (Nov. 23, 1998), available at <http://bit.ly/1lt7Klu> (linking depressive symptoms as to increased risk factors for the development of cardiovascular heart disease in among relatively healthy older women).

The importance of continuity in established patterns has been demonstrated in the older population. Indeed, physiological wellbeing of PERS and all other retirees is closely tied to their ability to maintain the lifestyles to which they've grown accustomed, including but not limited to maintaining social relationships. See Jeanne Jackson et al., *Occupation In Lifestyle Redesign: The Well Elderly Study Occupational Therapy Program*, 52 Am. J. Occupational Therapy 236, 329 (May 29, 1998) (noting that physiological wellbeing, happiness, as well as maintaining healthy social relationships are vital to healthy lifestyles). It follows that Oregonians PERS members who suffer loss of income due to inadequate COLAs, leading to an interruption of lifestyle, may be more prone to suffer serious medical consequences as a result of the 2013 PERS Legislation.

III. OREGON PERS COLAS AT THE PRE-2013 STATUTORY ANNUAL RATE FOR CURRENT RETIREES AND CURRENT EMPLOYEES WHO HAVE SUBSTANTIAL YEARS OF SERVICE ARE THE SUBJECT OF A SOLEMN PROMISE, AND THE LEGISLATURE'S ATTEMPT TO REDUCE COLAS FOR SERVICE ALREADY RENDERED CONSTITUTES A BREACH OF GOOD FAITH.

A. The Oregon Legislature's Failure to Uphold Its Commitment to PERS Members Strikes a Blow to All Oregonians.

In one of the most notable dissents in U.S. Supreme Court history, in the case of *Olmstead v. United States*, 277 U.S. 438 (1928), Justice Brandeis posited a standard for government action that is well suited to this occasion.

Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means—to declare that the Government may commit crimes in order to secure the conviction of a private criminal—would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face.

277 U.S. at 485, Brandeis, J. dissenting.

Amicus submits that although Justice Brandeis was addressing the importance of applying the highest standard of conduct to government action in the search and seizure context, the same high standard is equally applicable in the context of enforcing the State of Oregon's promises to Oregonian PERS members as to the rate of COLAs they shall receive in retirement.

Public employees have generally relied upon a variety of factors identified with public sector careers in choosing their work, one of the most significant among those rewards being an opportunity to solidify the expectation of economic security in retirement. "In one form or another Oregon has provided its public employees with a retirement plan as a contractual benefit of public employment, since 1945." *Strunk v. PERB*, 108 P.3d 1058, 1068 (2005). Moreover, since 1964 Oregon has recognized the importance of adjusting PERS retiree benefits in the light of increases in the cost of living, and the system has annually taken steps to supplement basic pension benefits since 1964, initially in the form of a thirteenth check system and after 1971 through the express legislative grant of cost of living adjustments (COLAs). See Or. Rev. Stat. 237.198 (1969); Or. Laws 1971 ch.738, §§ 11-12; Or. Rev. Stat. 238.360, (2011); Or. Rev. Stat. 238A.210 (2011).

Recent legislation passed by the Oregon Legislature commonly known as the “Nike Bill” demonstrates a recognition by the State that substantial commitments by its citizens to the State, expressed in the form of financial undertakings or other binding action deserve to be answered by a concomitant commitment on the part of the State to those individuals which is binding and beyond rescission. The Oregon Legislature approved HB 4200 on December 14, 2012 authorizing the governor to enter into “qualifying investment contracts” with taxpayers that promise to make certain investments.³ In exchange for promising to invest \$150 million within a five year period and create 500 new jobs, a taxpayer can maintain a “single sales factor method” when calculating taxes. The advantage to the “single sales factor method” is that the business will only be taxed on profits from sales in Oregon, in contrast to taxes based on worldwide sales, property, or payroll.⁴ The bill was motivated by Nike’s attempts to assure tax security as the company plans a multimillion dollar expansion in the state, but the legislation was passed to allow similar contracts with any company as long as the

³ See HB 4200, 76th Legis. Assemb., 2012 Spec. Sess (Or. 2012)

⁴ Harry Esteve, *Oregon Legislature Approves Nike Tax Deal In One-Day Special Session*, Oregon Live (Dec. 14, 2012), available at <http://bit.ly/1ke6enm>.

contract was signed prior to January 2014 and its duration is between 5 to 30 years.⁵

Surely the commitments of the tens of thousands of Oregon PERS members who gave and, in the case of those still actively employed, who continue to give loyal service to permit the state to conduct its business and other essential operations deserve no less than the same good faith on the part of the State of Oregon in recognition of their commitments. No less important is the message that the State of Oregon sends to recent hires in state public employment careers and those who have yet to be hired but will undoubtedly undertake career service to the state and its citizens in the days, years, and decades to come. Can the State of Oregon be counted on to accept responsibility to deliver on the promises it has made to past career employees and as to those promises the State will in the future make to its public employee work force?

The Oregon Legislature's attempt to abridge the COLA rights of current retirees and soon-to-be retirees with respect to service already rendered by both of those groups calls into question the integrity of the State of Oregon. The action amounts to nothing less than a change in the rules of the game after the last whistle has sounded.

⁵ Esteve, *supra*, n. 4.

When governments break promises, the community suffers a fundamental loss of trust that unquestionably hurts the morale of the citizenry. See Christina Scotti, *'A Promise Broken': Budget Deal Hits Military Retirees' Pensions*, FOXBusiness (Jan. 10. 2014), <http://fxn.ws/1jD9xEz> (discussing the effect of a congressional budget deal affecting the pensions of those who have committed their lives to their country, noting an overwhelming consensus of feeling cheated amongst military retirees). Such egregious breaches of faith increase the debilitating pressure older adults feel as they struggle to make ends meet in today's economy. See Ken Schwartz, *Zero Cost-Of-Living Adjustment To Impact Most Vulnerable Older Adults*, Nat'l Council On Aging (Oct. 15, 2010), <http://bit.ly/1oLYyAx> (discussing the incapacitating pressure older adults feel when their primary source of income is not properly adjusted for inflation); see also Jennifer Liberto, *Military Retirees: You Betrayed US, Cong.*, CNNMoney (Dec. 12, 2013), <http://cnmmon.ie/1bz9q7F> (noting that a 1% cut in COLA could be seen as a minor change equating to a little over \$3,500 loss in pension payouts for the average retiring army sergeant but in reality such a reduction equates to a massive cut over 20 years – ballooning to over \$80,000 on average).

CONCLUSION

For all of the policy reasons discussed above and for the legal reasons discussed in the Moro Petitioners' brief, amicus curiae AARP respectfully submits that the Court should declare SB 822 and SB 861 to be unconstitutional and void.

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CERTIFICATE OF FILING

I certify that on July 3, 2014, I filed the original of this Brief Amicus Curiae of AARP in Support of Petitioners by electronic filing with the Appellate Court Administrator, Appellate Court Records Section, by using the court's electronic filing system pursuant to ORAP 16.

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Brief Amicus Curiae of AARP in Support of Petitioners upon the following individuals on July 3, 2014, by using the court's electronic filing system pursuant to ORAP 16:

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Brief length

I certify that (1) this brief complies with the word-count limitation in ORAP 5.05(2)(b) and ORAP 8.15(3); and (2) the word-count of this brief (as described in ORAP 5.05(2)(a)) is 4,079 words.

Type size

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(4)(f).

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