

**STATE OF RHODE ISLAND  
KENT, SC.****SUPERIOR COURT**

MANUEL ANDREWS, JR.; STEPHEN BALESTRA;  
JOSEPH M. BARKETT; JOSEPH S. BATISTA;  
NAPOLEAN J. BRITO; MICHAEL A. CARDI;  
SALVATORE A. CELEBERTO; ROBERT G. CHIN;  
ROBERT S. CLEMENTS; HENRY J. COCHRANE, JR.;  
JAMES F. CONNELL; MANUEL COSTA; STEVEN T.  
CROSS; LEONARD CUMMINGS; BONNIE D.  
D'AGOSTINO; PETER E. DAY; STEPHEN T. DAY;  
MICHAEL A. DIFAZIO; THOMAS DILIBERO; STEPHEN  
DIPPOLITO; EDWARD L. DUGGAN; ROGER A.  
FARMER; ALAN R. FORTES; ROBERT P. GARVIN;  
WAYNE P. GILL; JOHN F. GLANCY; KEITH L. GRANT;  
BRIAN HASTINGS; ARMAND J. HERON; DENNIS M.  
HODGKINS; KENNETH W. HOSKIN; RICHARD J.  
HUGHES; LEO R. JENKINS, JR.; BRIAN A.  
KREIZINGER; PAUL LAMOUREUX; TIMOTHY M. LEE;  
WALTER A. LOISELLE; WILLIAM LUKE; EDWARD J.  
MARONEY; KEVIN M. MARONEY; TRACIE L.  
MARTINO; BRUCE M. MCDERMOTT; JOHN  
MCLAUGHLIN, SR.; ANTHONY Y. PACHECO;  
TIMOTHY PATTERSON; WAYNE D. PAULL; GERALD  
A. PENTA; ROY F. PERSSON, JR.; THOMAS  
PESATURO; G. SCOTT PIERCE; ARTHUR  
QUATTRUCCI; JOHN QUIGLEY; KENNETH F.  
RINALDI; KENNETH ROBIDEAU; HENRY P. ROY;  
JOHN SANTILLI; ERIC SHAUBLE; DENNIS W.  
SIMONEAU; JOHN SIMONEAU; KATHLEEN  
SIMONEAU; LEO SIMONEAU; PETER M. SPERDUTTI;  
ROBERT F. TAMBOE; WILLIAM J. THOMAS; ROBERT  
J. WATERS; and RICHARD ZOMPA,

Plaintiffs,

vs.

JAMES L. LOMBARDI, in his capacity as Treasurer of the  
City of Providence, Rhode Island,

Defendant.

K Case No.: 13-1128

JURY DEMAND

KENT SUPERIOR COURT  
FILED  
13 OCT 22 PM 3:18  
NANCY STRIULLI, CLERK

## COMPLAINT

This is a civil action requesting injunctive, declaratory and other relief to prohibit the unconstitutional and otherwise unlawful implementation of certain ordinances enacted by the City Council of the City of Providence insofar as they relate to suspending and reducing, on a retroactive basis, certain vested retirement benefits of already-retired Providence public employees.

## **PARTIES**

1. The Plaintiff, Manuel Andrews, Jr., is a retired Providence Police Department officer (hereinafter "Providence police officer") residing at 975 Smith Street, Providence, RI 02908.
2. The Plaintiff, Stephen Balestra, is a retired Providence police officer residing in Lincoln, Rhode Island.
3. The Plaintiff, Joseph M. Barkett, is a retired member of the Providence Fire Department (hereinafter "Providence firefighter") residing in North Scituate, Rhode Island.
4. The Plaintiff, Joseph S. Batista, is a retired Providence firefighter residing in Johnston, Rhode Island.
5. The Plaintiff, Napoleon J. Brito, is a retired Providence police officer residing in Warwick, Rhode Island.
6. The Plaintiff, Michael A. Cardi, is a retired Providence firefighter residing in Wakefield, Rhode Island.
7. The Plaintiff, Salvatore A. Celeberto, is a retired Providence firefighter residing in Naples, Florida.
8. The Plaintiff, Robert G. Chin, is a retired Providence police officer residing in West Greenwich, Rhode Island.
9. The Plaintiff, Robert S. Clements, is a retired Providence police officer residing in North Kingstown, Rhode Island.
10. The Plaintiff, Henry J. Cochrane, Jr. is a retired Providence firefighter residing in Smithfield, Rhode Island.
11. The Plaintiff, James F. Connell, is a retired Providence police officer residing in Port St. Lucie, Florida.

12. The Plaintiff, Manuel Costa, is a retired Providence firefighter residing in Pawtucket, Rhode Island.
13. The Plaintiff, Steven T. Cross, is a retired Providence police officer residing in North Scituate, Rhode Island.
14. The Plaintiff, Leonard Cummings, is a retired Providence firefighter residing in Warwick, Rhode Island.
15. The Plaintiff, Bonnie D. D'Agostino, is a retired Providence police officer residing in Providence, Rhode Island.
16. The Plaintiff, Peter E. Day, is a retired Providence firefighter residing in Cranston, Rhode Island.
17. The Plaintiff, Stephen T. Day, is a retired Providence firefighter residing in Providence, Rhode Island.
18. The Plaintiff, Michael A. DiFazio, is a retired Providence firefighter residing in Cranston Rhode Island.
19. The Plaintiff, Thomas DiLibero, is a retired Providence firefighter residing in The Villages, Florida.
20. The Plaintiff, Stephen Dippolito, is a retired Providence firefighter residing in Rehoboth, Massachusetts.
21. The Plaintiff, Edward L. Duggan, is a retired Providence firefighter residing in Providence, Rhode Island.
22. The Plaintiff, Roger A. Farmer, is a retired Providence firefighter residing in East Providence, Rhode Island.
23. The Plaintiff, Alan R. Fortes, is a retired Providence firefighter residing in Wakefield, Rhode Island.
24. The Plaintiff, Robert P. Garvin, is a retired Providence police officer residing in Melissa, Texas.
25. The Plaintiff, Wayne P. Gill, is a retired Providence police officer residing in Johnston, Rhode Island.
26. The Plaintiff, John F. Glancy, is a retired Providence police officer residing in West Warwick, Rhode Island.
27. The Plaintiff, Keith L. Grant, is a retired Providence firefighter residing in North Port, Florida.
28. The Plaintiff, Brian Hastings, is a retired Providence firefighter residing in Tampa, Florida.

29. The Plaintiff, Armand J. Heron, is a retired Providence firefighter residing in Scituate, Rhode Island.
30. The Plaintiff, Dennis M. Hodgkins, is a retired Providence firefighter residing in Smithfield, Rhode Island.
31. The Plaintiff, Kenneth W. Hoskin, is a retired Providence firefighter residing in North Scituate, Rhode Island.
32. The Plaintiff, Richard J. Hughes, is a retired Providence firefighter residing in Hermitage, Tennessee.
33. The Plaintiff, Leo R. Jenkins, Jr., is a retired Providence firefighter residing in Seekonk, Massachusetts.
34. The Plaintiff, Brian A. Kreizinger, is a retired Providence firefighter residing in Seekonk, Massachusetts.
35. The Plaintiff, Paul Lamoureux, is a retired Providence firefighter residing in North Scituate, Rhode Island.
36. The Plaintiff, Timothy M. Lee, is a retired Providence police officer residing in Rehoboth, Massachusetts.
37. The Plaintiff, Walter A. Loiselle, is a retired Providence firefighter residing in Venice, Florida.
38. The Plaintiff, William Luke, is a retired Providence firefighter residing in Cranston, Rhode Island.
39. The Plaintiff, Edward J. Maroney, is a retired Providence firefighter residing in Cranston, Rhode Island.
40. The Plaintiff, Kevin M. Maroney, is a retired Providence firefighter residing in West Warwick, Rhode Island.
41. The Plaintiff, Tracie L. Martino, is the widow of a retired Providence police officer residing in Hope Valley, Rhode Island.
42. The Plaintiff, Bruce M. McDermott, is a retired Providence firefighter residing in Carolina, Rhode Island.
43. The Plaintiff, John McLaughlin, Sr., is a retired Providence firefighter residing in Warwick, Rhode Island.
44. The Plaintiff, Anthony Y. Pacheco, is a retired Providence firefighter residing in Coventry, Rhode Island.

45. The Plaintiff, Timothy Patterson, is a retired Providence police officer residing in Greene, Rhode Island.
46. The Plaintiff, Wayne D. Paull, is a retired Providence firefighter residing in Charlestown, Rhode Island.
47. The Plaintiff, Gerald A. Penta, is a retired Providence firefighter residing in North Providence, Rhode Island.
48. The Plaintiff, Roy F. Persson, Jr., is a retired Providence police officer residing in West Greenwich, Rhode Island.
49. The Plaintiff, Thomas Pesaturo, is a retired Providence firefighter residing in Lincoln, Rhode Island.
50. The Plaintiff, G. Scott Pierce, is a retired Providence firefighter residing in West Warwick, Rhode Island.
51. The Plaintiff, Arthur Quattrucci, is a retired Providence firefighter residing in East Providence, Rhode Island.
52. The Plaintiff, John Quigley, is a retired Providence firefighter residing in Freedom, New Hampshire.
53. The Plaintiff, Kenneth F. Rinaldi, is a retired Providence firefighter residing in Johnston, Rhode Island.
54. The Plaintiff, Kenneth Robideau, is a retired Providence firefighter residing in Providence, Rhode Island.
55. The Plaintiff, Henry P. Roy, is a retired Providence police officer residing in East Greenwich, Rhode Island.
56. The Plaintiff, John Santilli, is a retired Providence police officer residing in Johnston, Rhode Island.
57. The Plaintiff, Eric Shauble, is a retired Providence firefighter residing in Warwick, Rhode Island.
58. The Plaintiff, Dennis W. Simoncau, is a retired Providence police officer residing in Palm Bay, Florida.
59. The Plaintiff, John Simoncau, is a retired Providence police officer residing in Warwick, Rhode Island.
60. The Plaintiff, Kathleen Simoncau, is a retired Providence police officer residing in Palm Bay, Florida.

61. The Plaintiff, Leo Simoneau, is a retired Providence firefighter residing in Smithfield, Rhode Island.
62. The Plaintiff, Peter M. Sperdutti, is a retired Providence firefighter residing in East Greenwich, Rhode Island.
63. The Plaintiff, Robert F. Tamboe, is a retired Providence firefighter residing in Cranston, Rhode Island.
64. The Plaintiff, William J. Thomas, is a retired Providence firefighter residing in Beverly Hills, Florida.
65. The Plaintiff, Robert J. Waters, is a retired Providence firefighter residing in North Scituate, Rhode Island.
66. The Plaintiff, Richard Zompa, is a retired Providence firefighter residing in Johnston, Rhode Island.
67. The Defendant, James J. Lombardi, is Treasurer of the City of Providence ("the City"), a municipal corporation and a political subdivision of the State of Rhode Island, and this civil action is brought against him in his official capacity only.

#### **JURISDICTION**

68. Jurisdiction over this matter exists in the Superior Court pursuant to G.L. 1956, §§ 8-2-13, 8-2-14, and 9-30-1, et seq., as it concerns an amount in over \$10,000.00, seeks remedies at law and equity, and requests the entry of a declaratory judgment.
69. Venue is proper in Kent County pursuant to G.L. 1956, § 9-4-3 in that multiple parties to this litigation reside therein.
70. The Kent County Superior Court has power to render the declaratory judgment sought herein pursuant to G.L. 1956, § 9-30-11 and Superior Court Rule of Civil Procedure 24(d), in that a copy of this complaint has been served on the Rhode Island Attorney General contemporaneous with its filing with the Clerk of the Superior Court.

#### **GENERAL ALLEGATIONS**

71. Each Plaintiff named herein ("Retiree" or collectively "Retirees") was a member of the class certified in that certain litigation entitled *The Providence Retired Police and Firefighters Association, Inc., et al v. The City of Providence* enumerated C. A. No. 12-3590, and has opted out of the settlement agreement reached by the parties to that class action.
72. Each Retiree is an individual or the spouse of an individual who retired from employment with either the Providence Police Department or the Providence Fire Department.
73. Each Retiree is entitled to participate in the retirement system created and governed by Article VI, Section 17 of the Providence Code of Ordinances (the "Retirement System").

74. At all times material to the matters described herein, pursuant to the Municipal Police Arbitration Act, G.L. 1956, § 28-9.2-1, et seq., Fraternal Order of Police Lodge Number 3 and the City engaged in mandatory and binding collective bargaining and/or interest arbitration concerning all terms and conditions of the Providence police officers' employment, which process resulted in the creation of a series of negotiated and/or arbitrated collective bargaining agreements ("CBAs") between Lodge Number 3 and the City.
75. At all times material to the matters described herein, pursuant to the Firefighters Arbitration Act, G.L. 1956, § 28-9.1-1, et seq., International Association of Firefighters Local 799 and the City engaged in mandatory and binding collective bargaining and/or interest arbitration concerning all terms and conditions of the Providence firefighters' employment, which process resulted in the creation of a series of negotiated and/or arbitrated CBAs between Local 799 and the City.
76. At various times, some of the Retirees engaged directly or indirectly in disputes with the City over their entitlement to benefits allegedly due under certain of the CBAs described above and/or under the Retirement System, which disputes have been resolved pursuant to binding contracts, court judgments, court decisions, consent judgments, arbitration awards or settlement agreements.
77. One such benefit provided to each Retiree under the various CBAs and/or the Retirement System was health insurance (collectively, and as to each Retiree, "Health Care Benefits") for the duration of his or her life and that of his or her spouse.
78. Upon information and belief, no Retiree was ever told by the City during his or her employment, or at the time of retirement, that his or her Health Care Benefits could ever be reduced or suspended during his or her lifetime, or during the lifetime of his or her spouse.
79. Each Retiree retired after having determined, considered and relied upon the retirement benefits to which he or she was entitled over the life of his or her retirement, which benefits included the Health Care Benefits throughout the duration of such retirement and for the lifetime of such Retiree's spouse.

*The Medicare Enrollment Statute*

80. In June of 2011, the Rhode Island General assembly enacted House Bill 2011 - 5894, substitute A, as amended, which became Public Law 2011, chapter 151, article 12, section 2 after Governor Chafee signed the bill on June 30, 2011. A copy thereof is attached to this complaint as **Exhibit A** (the "Medicare Enrollment Statute").
81. The Medicare Enrollment Statute amended Title 28 of the General Laws to add Chapter 54, Section 1.
82. The Medicare Enrollment Statute had an effective date of July 1, 2011, and is therefore now purported to be in effect. It provides:

Every municipality . . . may require its retirees, as a condition of receiving or continuing to receive retirement payments and health benefits, to enroll in Medicare as soon as he or she is eligible, notwithstanding the provisions of any other statute, ordinance, interest arbitration award, or collective bargaining agreement to the contrary. Municipalities that require said enrollment shall have the right to negotiate any Medicare supplement or gap coverage for Medicare-eligible retirees, but shall not be required to provide any other health-care benefits to any Medicare-eligible retiree or his or her spouse who has reached 60-5 (65) years of age, notwithstanding the provisions of any other statute, ordinance, interest arbitration award, or collective bargaining agreement to the contrary. Municipality provided benefits that are provided to Medicare-eligible individuals shall be secondary to Medicare benefits. Nothing contained herein shall impair collectively bargained Medicare supplement insurance.

*The Health Benefits Ordinance*

83. In reliance upon the passage of the Medicare Enrollment Statute, the Providence City Council on July 19, 2011 enacted chapter 2011 – 32 ordinance number 422 amending article VI, section 17 of the Providence Code of Ordinances dealing with its retirement system. A copy of the Health Benefits Ordinance is attached to this Complaint as Exhibit B (the "Health Benefits Ordinance").

84. The Health Benefits Ordinance states as follows:

Notwithstanding any other ordinance, collective bargaining agreement, or interest arbitration award:

(1) as a condition of receiving or continuing to receive retirement payments and health benefits, all retired individuals and spouses of retired individuals shall enroll in Medicare immediately upon eligibility. Any health benefits provided by the City to Medicare-eligible individuals shall be secondary to the Medicare benefits.

(2) with the exception of Medicare supplement or gap coverage, the City shall not provide Medicare-eligible retirees or Medicare eligible spouses or of retirees with healthcare benefits. The cost of said Medicare supplement or gap coverage shall be paid by the City and/or retiree as otherwise provided by ordinance or contract.

(3) nothing contained in this section shall be construed to confer healthcare benefits on a retiree or retiree's spouse which are not otherwise provided by ordinance or contract.

85. Pursuant to the authority purportedly granted by the Medicare Enrollment Statute and the Health Benefits Ordinance, the City has required and will continue to require all Retirees who are Medicare-eligible to enroll in Medicare as of their 65th birthday, with the intention



that the City will no longer provide Health Care Benefits to Retirees who are eligible for Medicare, whether enrolled in Medicare or not.

86. Pursuant to the authority purportedly granted by the Medicare Enrollment Statute and the Health Benefits Ordinance, the City has terminated Health Care Benefits for all Retirees who are eligible for Medicare, and will terminate Health Care Benefits for the remainder of the Retirees when they reach the age at which they become eligible for Medicare, regardless of whether or not they enroll.
87. Certain Retirees who have enrolled in Medicare in compliance with the Health Benefits Ordinance have been required to pay late enrollment penalties to the Medicare program as part of their Medicare Premiums.
88. As a result of the implementation of the Medicare Enrollment Statute and the Health Benefits Ordinance, the Retirees who are Medicare eligible are, and each of them is, receiving significantly fewer benefits than they were entitled to under the Retirement System and the CBAs in effect as of the dates they retired, as the same may have been modified by subsequent contracts, court judgments, court decisions, consent judgments, arbitration awards or settlement agreements.
89. As a result of the implementation of the Medicare Enrollment Statute and the Health Benefits Ordinance, the Retirees who are Medicare eligible are, and each of them is, incurring significantly greater "out of pocket" costs for medical care than they incurred prior to the enactment thereof.
90. The City's primary motivation for enacting the Health Benefits Ordinance was a foreseeable financial circumstance, and in particular, was to avoid the financial impact of fiscal and budgetary decisions concerning employee benefits that had been made over a period extending back to the earliest date that any Retiree retired from City employment.
91. The City had other less drastic measures available to it to achieve a balanced budget that did not require abrogating or suspending the obligations which it agreed to provide to the Retirees before their retirement.

#### **COUNT ONE**

#### **DECLARATORY JUDGMENT - BREACH OF CONTRACT**

92. The Retirees reallege paragraphs 1 through 91 as if fully set forth in this paragraph.
93. The Retirement System and the CBAs between the City and the unions representing the Retirees as of their respective retirement dates, as supplemented, modified, or affirmed by court judgments, consent agreements, settlement agreements court decisions, or arbitration awards, are contracts giving rise to substantial contract rights under Rhode Island law.
94. The Health Care Benefits vested, at the latest, at the time each Retiree retired in compliance with the then-applicable CBA and/or Retirement System.

95. The City's enactment of the Health Benefits Ordinance and unilateral termination of the Health Care Benefits when Retirees reach the age of Medicare eligibility is in breach of, or will be in breach of (as the case may be) the City's contractual obligations to the Retirees and has created an actual, justiciable controversy.
96. The Retirees have standing to pursue this matter in that the aforesaid controversy undermines their legal right to receive the Health Care Benefits promised to them as part of the Retirement System and by way of interest arbitration awards, contracts, court judgments, consent judgments, settlement agreements, court decisions or CBAs, and affects their legal relations with the City.
97. The Retirees suffer and will continue to suffer from uncertainty, insecurity, and financial harm absent redress in this Court by way of a declaratory judgment of their present and future rights to receive the Health Care Benefits as promised by the City.
98. The Retirees are due monetary damages in an amount to be proven at trial.

WHEREFORE, the Retirees respectfully pray that this Court:

- a. Enter a declaratory judgment pursuant to G.L. 1956, § 9-30-1, et seq. against James J. Lombardi in his capacity as Treasurer of the City of Providence pronouncing that the City is in breach of its contractual obligations with the Retirees insofar as it has refused and failed to provide them with the Health Care Benefits to which they are entitled, and that denial of, and any attempt by the City to deny the Retirees the Health Care Benefits under authority of the Health Benefits Ordinance is in breach of the City's contractual obligations; and
- b. Award damages to the Retirees in an amount sufficient to make them whole; and
- c. Grant the Retirees all such other relief as this Court deems just and proper.

**COUNT TWO**  
**DECLARATORY JUDGMENT – MEDICARE ENROLLMENT STATUTE**  
**FACIAL CHALLENGE**

99. The Retirees reallege paragraphs 1 through 98 as if fully set forth in this paragraph.
100. The purpose of the Medicare Enrollment Statute is to unilaterally and substantially impair the Retirees' rights to the Health Care Benefits created by ordinances, interest arbitration awards, contracts, court judgments, consent judgments, settlement agreements, court decisions and/or CBAs, and thereby deprive the Retirees, without just compensation, of their property rights to the Health Care Benefits granted to them by virtue of fully performing their jobs.

101. There is no legitimate public purpose for the broad authority contained in the Medicare Enrollment Statute for municipalities to unilaterally terminate municipal obligations to provide Health Care Benefits.
102. The governmental interest that the General Assembly sought to protect in enacting the Medicare Enrollment Statute is purely financial.
103. The Medicare Enrollment Statute is not reasonable and necessary under the circumstances.
104. The Medicare Enrollment Statute is not tailored so that the contractual impairments that are created by it are reasonable nor are they necessary to any allegedly public purpose for which the Medicare Enrollment Statute was purportedly enacted.
105. The Medicare Enrollment Statute is unconstitutional as written, in that it violates the Contracts Clause, Due Process Clause, and Takings Clause of the Constitution of the United States and/or the Rhode Island Constitution.
106. There are no circumstances under which the Medicare Enrollment Statute could be constitutionally applied.

WHEREFORE, the Retirees respectfully pray that this Court:

- a. Enter a declaratory judgment pursuant to G.L. 1956, § 9-30-1, et seq. pronouncing that the Medicare Enrollment Statute as enacted is repugnant to the Constitution of the United States and the Constitution of the State of Rhode Island, and further that such statute is null and void *ab initio*; and
- b. Grant the Retirees all such other relief as this Court deems just and proper.

**COUNT THREE**  
**DECLARATORY JUDGMENT – MEDICARE ENROLLMENT STATUTE**  
**AS APPLIED CHALLENGE**

107. The Retirees reallege paragraphs 1 through 106 as if fully set forth in this paragraph.
108. The Medicare Enrollment Statute purports to authorize the City to, and the City has, unilaterally and substantially impaired the Retirees' rights to Health Care Benefits created by the Retirement System, interest arbitration awards, contracts, court judgments, consent judgments, settlement agreements, court decisions and/or CBAs.
109. The Medicare Enrollment Statute purports to authorize the City to deprive the Retirees of their property rights to the Health Care Benefits granted to them by virtue of fully performing their jobs.

110. The Medicare Enrollment Statute purports to authorize the City to, and the City has, impaired the obligation of contracts, in violation of the Contracts Clauses of the Constitution of the United States and/or the Rhode Island Constitution.
111. The Medicare Enrollment Statute purports to authorize the City to violate, and the City has violated, the Retirees' property rights by taking a property right without just compensation in violation of the Takings Clauses of the United States Constitution and/or the Rhode Island Constitution.
112. The Medicare Enrollment Statute purports to authorize the City to deprive, and the City has deprived, the Retirees of their property without due process of law in violation of the Due Process Clauses of the United States Constitution and/or the Rhode Island Constitution.

WHEREFORE, the Retirees respectfully pray that this Court:

- a. Enter a declaratory judgment pursuant to G.L. 1956, § 9-30-1, et seq. pronouncing that the Medicare Enrollment Statute, as applied, is repugnant to the Constitution of the United States and the Constitution of the State of Rhode Island, and further that such statute is void as to the Retirees; and
- b. Grant the Retirees all such other relief as this Court deems just and proper.

**COUNT FOUR**  
**DECLARATORY JUDGMENT – HEALTH BENEFITS ORDINANCE**  
**FACIAL CHALLENGE**

113. The Retirees reallege paragraphs 1 through 112 as if fully set forth in this paragraph.
114. The purpose of the Health Benefits Ordinance is to unilaterally and substantially impair the Retirees' rights to the Health Care Benefits created by ordinances, interest arbitration awards, contracts, court judgments, consent judgments, settlement agreements, court decisions and/or CBAs, and thereby deprive the Retirees, without just compensation, of their property rights to the Health Care Benefits granted to them by virtue of fully performing their jobs.
115. The City had no legitimate public purpose for the termination of its obligation to provide the Health Care Benefits to the Retirees.
116. The Health Benefits Ordinance is not reasonable and necessary under the circumstances.
117. The Health Benefits Ordinance is unconstitutional as written, in that it violates the Contracts Clause, Due Process Clause, and Takings Clause of the Constitution of the United States and/or the Rhode Island Constitution.

118. There is no set of circumstances under which the Health Benefits Ordinance would be valid.

WHEREFORE, the Retirees respectfully pray that this Court:

- a. Enter a declaratory judgment pursuant to G.L. 1956, § 9-30-1, et seq. against James J. Lombardi in his capacity as Treasurer of the City of Providence pronouncing the Health Benefits Ordinance repugnant to the Constitution of the United States and the Constitution of the State of Rhode Island, and further declaring that such ordinance is null and void *ab initio*; and
- b. Grant the Retirees all such other relief as this Court deems just and proper.

**COUNT FIVE**  
**DECLARATORY JUDGMENT - HEALTH BENEFITS ORDINANCE**  
**AS APPLIED CHALLENGE**

119. The Retirees reallege paragraphs 1 through 118 as if fully set forth in this paragraph.
120. Through enforcement of the Health Benefits Ordinance, the City has unilaterally and substantially impaired the Retirees' rights to the Health Care Benefits created by ordinances, interest arbitration awards, contracts, court judgments, consent judgments, settlement agreements, court decisions and/or CBAs, and has deprived the Retirees of their property rights to the Health Care Benefits granted to them by virtue of fully performing their jobs.
121. The City's action has impaired the obligation of contracts, in violation of the Contracts Clauses of the Constitution of the United States and/or the Rhode Island Constitution.
122. The City's action has violated the Retirees' property rights by taking a property right without just compensation in violation of the Takings Clauses of the United States Constitution and/or the Rhode Island Constitution.
123. The City's action has deprived the Retirees of their property without due process of law in violation of the Due Process Clauses of the United States Constitution and/or the Rhode Island Constitution.

WHEREFORE, the Retirees respectfully pray that this Court:

- a. Enter a declaratory judgment pursuant to G.L. 1956, § 9-30-1, et seq. against James J. Lombardi in his capacity as Treasurer of the City of Providence pronouncing the Health Benefits Ordinance, as applied, repugnant to the Constitution of the United States and the Constitution of the State of Rhode Island, and further declaring that such ordinance is void as to the Retirees; and
- b. Grant the Retirees all such other relief as this Court deems just and proper.

**COUNT SIX**  
**PROMISSORY ESTOPPEL**

124. The Retirees reallege paragraphs 1 through 123 as if fully set forth in this paragraph.
125. The City was authorized by Rhode Island law to promise the Plaintiffs that it would deliver the retirement benefits described herein to the Plaintiffs.
126. The City did promise the Plaintiffs that it would deliver the retirement benefits described in this Complaint, intending that the Plaintiffs would conduct their activities while employed by the City in reasonable reliance on those promises.
127. The Plaintiffs actually relied on the City's promises of retirement benefits in conducting their activities while employed by the City and thereafter.
128. It is inequitable that the City should have the benefit of the Plaintiffs' reliance on the City's promises but that it should not be required to comply with its promises of retirement benefits now that the Plaintiffs have retired.

WHEREFORE, the Retirees respectfully pray that this Court:

- a. Enter a declaratory judgment pursuant to G.L. 1956, § 9-30-1, et seq. against James J. Lombardi in his capacity as Treasurer of the City of Providence pronouncing that the City is in breach of its contractual obligations with the Retirees insofar as it has refused and failed to provide them with health benefits to which they are entitled, and that any attempt by the City to enforce the Health Benefits Ordinance as against the Retirees is a breach of the City's contractual obligations; and
- b. Award damages to the Retirees in an amount sufficient to make them whole; and
- c. Grant the Retirees all such other relief as this Court deems just and proper.

**COUNT SEVEN**  
**PRELIMINARY INJUNCTION**

129. The Retirees reallege paragraphs 1 through 128 as if fully set forth in this paragraph.
130. The City's enactment of the Health Benefits Ordinance and withholding of the Health Care Benefits from the Retirees pursuant to the Health Benefits Ordinance exposes the Retirees to imminent and actual irreparable harm.
131. The Retirees have a likelihood of success on the merits insofar as the City has unilaterally and substantially impaired the Retirees' rights to Health Care Benefits with no legitimate public purpose for such impairment, and absent reasonableness and necessity.

132. The balance of the equities favors entry of injunctive relief on behalf of the Retirees insofar as they, as individuals, are less able to bear the burden of the loss of their Health Care Benefits, and immediate receipt of savings from withholding the Health Care Benefits will not save the City from financial ruin.
133. The status quo can only be preserved by entry of immediate injunctive relief on behalf of the Retirees.

WHEREFORE, the Retirees respectfully pray that this Court:

- a. After hearing, issue a permanent injunction directing James J. Lombardi in his capacity as Treasurer of the City of Providence to provide the Health Care Benefits wrongfully withheld, and prohibiting the City from terminating or suspending the Health Care Benefits to which the Retirees are entitled under the terms of the CBAs in effect at the time each retired, or to which each is entitled under authority of any other statute, ordinance, arbitration, settlement agreement, judgment, consent judgment, court order, or other; and
- b. Grant the Retirees all such other relief as this Court deems just and proper.

**JURY DEMAND**

The Retirees hereby demand a trial by jury on all issues so triable.

Dated: October 22, 2013

PLAINTIFFS  
By their attorneys

  
\_\_\_\_\_  
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General Laws of Rhode Island  
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\*\*\* Current through the January 2012 Session \*\*\*

\*\*\* Annotations current through May 29, 2013 \*\*\*

TITLE 28. LABOR AND LABOR RELATIONS  
CHAPTER 54. MUNICIPAL EMPLOYEES

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*R.I. Gen. Laws § 28-54-1 (2012)*

**§ 28-54-1. Medicare enrollment**

Every municipality, participating or nonparticipating in the municipal employees' retirement system, may require its retirees, as a condition of receiving or continuing to receive retirement payments and health benefits, to enroll in Medicare as soon as he or she is eligible, notwithstanding the provisions of any other statute, ordinance, interest arbitration award, or collective bargaining agreement to the contrary. Municipalities that require said enrollment shall have the right to negotiate any Medicare supplement or gap coverage for Medicare-eligible retirees, but shall not be required to provide any other healthcare benefits to any Medicare-eligible retiree or his or her spouse who has reached sixty-five (65) years of age, notwithstanding the provisions of any other statute, ordinance, interest arbitration award, or collective bargaining agreement to the contrary. Municipality provided benefits that are provided to Medicare-eligible individuals shall be secondary to Medicare benefits. Nothing contained herein shall impair collectively bargained Medicare Supplement Insurance.

**HISTORY:** P.L. 2011, ch. 151, art. 12, § 2.



**City of Providence**  
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

**CHAPTER 2011-32**

**No. 422**

**AN ORDINANCE IN AMENDMENT OF CHAPTER  
17, ARTICLE VI OF THE CODE OF ORDINANCES,  
ENTITLED: "RETIREMENT SYSTEM."**

*Approved July 19, 2011*

***Be it ordained by the City of Providence:***

WHEREAS, A fiscal crisis presently exists in the City of Providence, with structural deficits in the current fiscal year requiring lay-offs and other cost-savings measures in order to bring the budget into balance, and projected structural deficits in the coming fiscal years; and

WHEREAS, Personnel costs for city employees and retirees are the most significant costs in the city budget; and

WHEREAS, A significant portion of the city's current and future liabilities result from the payment of pension and post-retiree benefit costs; and

WHEREAS, Estimates of the city's unfunded liability for pension benefit costs are currently \$828,484,533, and unfunded employee post-retiree benefit costs exceed \$1,211,574,962; and

WHEREAS, The city currently provides some employees and retirees medical benefits which are in part duplicative of coverage provided by the federal government, a situation which cannot be permitted to continue in the face of the fiscal crisis;

WHEREAS, The Municipal Financial Review Panel recommended that the City Council enact an ordinance requiring coordination between city-paid post-retirement health benefits and Medicare benefits; and

NOW, THEREFORE, BE IT RESOLVED, That the City of Providence adopts this ordinance to address costs which impact its financial stability.

SECTION I. The Providence Code of Ordinances, Section 17, entitled "Officers and Employees," Article VI, entitled "Retirement System," is hereby amended to add the following section:

Sec. 17-195. - Limits on post-retirement health benefits.

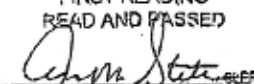
Notwithstanding any other ordinance, collective bargaining agreement, or interest arbitration award:

(1) As a condition of receiving or continuing to receive retirement payments and health benefits, all retired individuals and spouses of retired individuals shall enroll in Medicare immediately upon eligibility. Any health benefits provided by the city to Medicare-eligible individuals shall be secondary to the Medicare benefits.


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- (2) With the exception of Medicare supplement or gap coverage, the city shall not provide Medicare-eligible retirees or Medicare-eligible spouses of retirees with healthcare benefits. The cost of said Medicare supplement or gap coverage shall be paid by the city and/or retiree as otherwise provided by ordinance or contract.
- (3) Nothing contained in this section shall be construed to confer healthcare benefits on a retiree or retiree's spouse which are not otherwise provided by ordinance or contract.

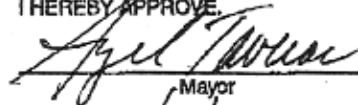
SECTION II. This ordinance shall take effect upon passage.

IN CITY COUNCIL  
JUL 07 2011  
FIRST READING  
READ AND PASSED  
 CLERK

IN CITY  
COUNCIL  
JUL 18 2011  
FINAL READING  
READ AND PASSED  


PRESIDENT  
  
ACTING CLERK

I HEREBY APPROVE

  
Mayor  
Date: 7/18/11