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Cc: [Everts, Todd](#); [Fox, Susan](#); [Triem, Joe](#); [Carlson, Amy](#); [Wilkinson, Kris](#); [Johnson, Julie](#); [Schaefer, Sam](#)
Subject: TRS Pension Lawsuit
Date: Friday, October 11, 2013 4:33:03 PM
Attachments: [DOC101113.pdf](#)

Dear SAVA Members,

A TRS pension lawsuit over changes to the GABA from the 2013 session was filed against the state today. The complaint alleges that the reduction from 1.5% to .5% GABA for teachers was an illegal impairment of contract, and it also alleges the GABA is a property interest, and that the state's modification of it was an illegal taking of property . The plaintiffs include individuals who retired before the 1999 GABA implementation, a recent retiree from 2012 that is not yet eligible for GABA, retirees who retired after the 1999 GABA implementation and who were entitled to GABA before HB 377 took effect, a teacher who is eligible for retirement based on years in service but who has not yet retired, and on behalf of MEA-MFT. In effect, the individually named plaintiffs represent a wide variety of plaintiff classes who became pension members before the effective date of HB 377.

I have attached the pleading, below. If you have questions, please do not hesitate to call me.

With regards,

K. Virginia ("Ginger") Aldrich

Legislative Attorney

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"Law is the public conscience." – Thomas Hobbes, Leviathan

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WYDELL

MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

JUDY BYRNE, JANET KRANSKY,
SUSAN NARDINGER, HAZEL JOHNSON,
LORI BREMER, CHARLENE SUCKOW,
MEA-MFT

Plaintiffs,

-v-

STATE OF MONTANA, TEACHERS'
RETIREMENT SYSTEM OF THE STATE
OF MONTANA, TEACHERS'
RETIREMENT BOARD

Cause No: ADV-2013-738
pd ✓ (3)

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

This lawsuit seeks declaratory and injunctive relief to prevent unnecessary benefit reductions to the beneficiaries of the Teachers' Retirement System of the State of Montana.

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During the 63rd Legislature, Montana enacted House Bill 377 (Chapter 389 of the Montana Laws of 2013), which made significant and necessary changes to the administration and funding of the Teachers' Retirement System in order to ensure its actuarial soundness, as required by state law and the Montana State Constitution, Art. VIII, §15. However, the law also contained Section 11 which was not required to make the system actuarially sound and instead illegally reduced the guaranteed annual benefit adjustment of pension benefits to TRS retirees and all TRS members hired prior to July 1, 2013. The retirement benefits due teachers in Montana constitute a contract with the State of Montana and a cognizable property interest. The illegal reduction in the guaranteed annual benefit adjustment constitutes a legislative act that illegally impairs a state contract and takes property without compensation in violation of the federal and Montana constitutions. Therefore, Plaintiffs are entitled to their sought relief. For their cause of action, Plaintiffs allege as follows:

PARTIES:

- 1) Judy Byrne taught English, French and drama at Lewistown Junior High School, a public school, from 1972-73 school year through the end of the 1996-97 school year. Throughout her teaching career, she was a member of the Teachers' Retirement System of the State of Montana (TRS). She retired effective July 1, 1997 and began drawing retirement benefits from TRS. She currently resides in Great Falls, Montana. Her primary source of income is her TRS pension benefits and she has been receiving increases in her pension benefits of 1.5% annually as a result of the GABA.
- 2) Janet Kransky was a school librarian employed by the public schools in Missoula, Malta and Billings Montana from the 1969-70 school year through the 1987-88 school year (at which

point she took a job outside of public education) and was employed again by the public schools in Billings from the 1993-94 school year to the end of the 2011-12 school year. Throughout her career working in public education, she was a member of TRS. She retired on July 1, 2012 and began drawing retirement benefits from TRS. She currently resides in Billings, Montana. Her TRS pension benefits are a substantial part of retirement income. She will become eligible for a GABA increase in 2015.

3) Susan Nardinger taught in the elementary schools of the Great Falls Public School District from the 1975-76 school year through the end of the 2001-02 school year. Throughout her teaching career, she was a member of TRS. She retired on July 1, 2002 and began drawing retirement benefits from TRS. She currently resides in Joliet, Montana. The primary source of her income is her TRS pension benefits and she has been receiving increases in her pension benefits of 1.5% annually as a result of the GABA.

4) Hazel Johnson retired after a 42-year career as a public elementary school teacher at various public school districts in Montana including the Power Public Schools, the Fairfield Public Schools, the Conrad Public Schools, the Great Falls Public School District and the Helena Public School District. Throughout her teaching career, she was a member of TRS. She retired at the end of the 1990-91 school year and, since 1999, has been receiving increases in her pension benefits of 1.5% annually as a result of the GABA.

5) Lori Bremer is currently employed as a high school English teacher and librarian by the Red Lodge Public Schools. She has been in this position since the beginning of the 1985-86 school year, with no break in service. Throughout her teaching career, she has been a member of TRS. While she plans to continue to work for several more years, she is in the process of

planning for her retirement and is relying on the guaranteed annual benefit adjustment of 1.5% to help pay for the rapidly-increasing costs of health care insurance and costs and the potential costs of long-term care.

6) Charlene Suckow taught in the elementary schools of the Great Falls Public School District from the 1971-72 school year until the end of the 2001-02 school year. Throughout her teaching career, she was a member of TRS. She retired on July 1, 2002 and began drawing retirement benefits from TRS. She currently resides in Great Falls, Montana. The primary source of her income is her TRS pension benefits and she has been receiving increases in her pension benefits of 1.5% annually as a result of the GABA.

7) MEA-MFT is a state-wide labor union of 286 local affiliates and approximately 17,500 individual members, of whom approximately 12,000 are members of TRS. MEA-MFT also has approximately 1,065 members who are retired educators receiving pension benefits from TRS and who retired prior to the passage of HB 377. MEA-MFT brings this action on behalf of its retired members and the vast majority of its currently-employed members who became members of TRS before July 1, 2013 and have not withdrawn their members' account balance and who thus, prior to the passage of HB 377, paid into a retirement system that included a guaranteed annual benefit adjustment of 1.5% for all retirees who have been receiving benefits for at least 36 months.

8) The Defendant State of Montana is a state that has its capitol in Helena, Montana. The State established the Defendant Teachers' Retirement System of the State of Montana under the provisions of Chapter 87, Laws of 1937. The purpose of TRS is to provide retirement, death, and disability benefits to the members of TRS. TRS is governed by Defendant Teachers'

Retirement Board, which is responsible for administering the retirement system, including enrolling new members, collecting member and employer contributions, and paying retirement benefits.

9) The TRS Board is composed of six members appointed by the Governor. Four members are appointed from the teaching profession, of which one must be a public school classroom teacher and one a retired teacher, and two members are appointed as representatives of the public sector. The Board employs administrative officers and a staff to conduct the business of the system.

GENERAL ALLEGATIONS:

10) All persons employed by public schools, state agencies, community colleges or special education cooperatives in Montana in a teaching or educational services capacity for at least 210 hours during the fiscal year must become members of TRS. Membership is mandatory for individuals working in positions covered by TRS, which positions include (but are not limited to): teachers, principals, vice-principals, district superintendents, county superintendents of schools, librarians, coaches, paraprofessionals providing instructional support, teacher's aides, speech therapists, school nurses, school psychologists, guidance counselors, study hall monitors, dean of students, curriculum specialists, and others employed in a teaching or educational services capacity or a professionally qualified person as defined in Section 20-7-901, MCA of any public school, state agency, community college, or special education cooperative in the State of Montana.

11) As of July 1, 2013, TRS had 12,229 active full-time members, 6,020 active part-time members and 13,868 retired members and beneficiaries.

12) TRS members and their employers are required to remit to TRS a percentage of each member's gross pay to help fund the system benefits. TRS is a "Defined Benefit Plan" qualified under Internal Revenue Code Section 401 (a). As a "Defined Benefit Plan," a monthly benefit is calculated based on each member's total years of service credit and average final compensation, not on the account balance or the performance of the financial markets. Generally, members with a minimum of 25 years of service or who have reached age 60 with 5 years of service are eligible to receive an annual retirement benefit equal to creditable service years divided by 60, and then multiplied by the average final compensation. For a person who (a) became a member before July 1, 2013 and (b) has not withdrawn his or her member's account balance, the average final compensation is the average of the highest three consecutive years of earned compensation. Benefits fully vest after 5 years of creditable service. Vested employees may retire at or after age 50 and receive reduced retirement benefits.

13) In Chapter 360 of the Laws of 1999, the Montana Legislature enacted a guaranteed annual benefit adjustment (GABA) to TRS benefits which provides on the first of January of each year a 1.5% increase in monthly TRS benefits for all retirees who have been receiving benefits for at least 36 months. By way of example only, the average annual benefit for retired TRS members in 2000 was \$12,995.00. Solely as a result of the GABA, that benefit amount increased to \$15,537.05 after January 1, 2013.

14) In what is now Chapter 389 of the Laws of 2013, the 2013 Legislature passed, and the Governor signed, HB 377 which made significant changes in the administration and funding of TRS effective July 1, 2013. Pursuant to HB 377, membership in TRS is now divided into two tiers. A Tier One member is a person who (a) became a member before July 1, 2013 and (b) has

not withdrawn his or her member's account balance. A Tier Two member is a person who (a) first becomes a member on or after July 1, 2013 or (b) after withdrawing his or her member's account balance, becomes a member again on or after July 1, 2013. All of the individual plaintiffs are Tier One members, MEA-MFT brings this case on behalf of its Tier One members and this case concerns only Tier One members.

15) The provision of HB 377 at issue in this case is Section 11 which amends Section 19-20-219, MCA to provide that effective January 1, 2014 the guaranteed annual benefit adjustment will decrease from 1.5% to 0.5% if the most recent actuarial valuation shows that the TRS retirement system liabilities are less than 90% funded. If the most recent actuarial valuation shows that the TRS retirement system liabilities are at least 90% funded, the TRS board may set the GABA between 0.5% and 1.5%, provided that the GABA increase is not projected to cause the system's liabilities to be less than 85% funded.

16) The most recent actuarial valuation of TRS is as of July 1, 2103 and was presented to the TRS Board and the public on September 27, 2013. According to that valuation, TRS' liabilities are less than 90% funded. Thus, as required by HB 377, on January 1, 2014 the GABA will decrease from 1.5% to 0.5%. The TRS staff and administration are now in the process of modifying the TRS computer programs to decrease the GABA from 1.5% to 0.5% beginning on January 1, 2014.

CONTRACTS CLAUSE VIOLATION:

17) Plaintiffs re-allege the allegations contained in the previous paragraphs

18) The enactment of the GABA in 1999 (effective January 1, 2000) constituted a contractual obligation of the State of Montana that on the first of January of each year, TRS monthly benefits

will increase by a guaranteed 1.5% for all TRS members who are now classified as Tier One members (after those members have received benefits for at least 36 months).

19) Tier One TRS members relied on this contractual commitment in determining whether to continue their employment and when to retire and receive their retirement benefits and relied upon the income from the GABA as an important part of their retirement income.

20) The reduction in the GABA mandated by Section 11 of HB 377 violates the State of Montana's contractual commitment to Tier One TRS members and impairs their contract with the State in violation of Article II, Section 31 of the Montana Constitution.

TAKINGS CLAUSE VIOLATION:

21) Plaintiffs re-allege the allegations contained in all previous paragraphs.

22) The interest of Class One TRS members in their retirement benefits created by the actions of the State of Montana, specifically their interest in a guaranteed annual benefit adjustment of not less than 1.5% as described above, constitutes a property interest within the meaning of the of Article II, Sections 3 and 17 of the Montana Constitution.

23) The reduction in the GABA for Class One TRS members mandated by Section 11 of HB 377 constitutes a taking of property without just compensation in violation of Article II, Sections 17 and 29 of the Montana Constitution.

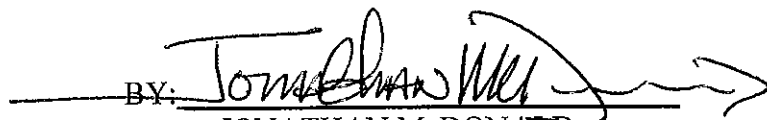
WHEREFORE Plaintiffs pray for judgment against Defendants as follows:

1) For a Declaratory Judgment that Section 11 of HB 377 (Section 11 of Chapter 389 of the Laws of 2013) is an unconstitutional violation of the contracts clause of the Montana Constitution.

- 2) For a Declaratory Judgment that Section 11 of HB 377 is an unconstitutional violation of the takings clauses of the Montana Constitution.
- 3) For an order requiring Defendants to make the guaranteed annual benefits adjustment to all Tier One TRS members as required prior to the enactment of Section 11 of HB 377
- 4) For an award of Plaintiffs' reasonable attorney fees pursuant to Section 27-8-313, MCA, and the private attorney general doctrine.
- 5) For such other and further relief as this Court deems just and proper

DATED this 11 day of October, 2013.

DIX, HUNT & McDONALD

BY: 
JONATHAN McDONALD
Attorneys for Plaintiffs