Public Pensions: The Changing Legal Landscape

Amy Monahan
University of Minnesota Law School
A Quick Primer

• Protections are always a matter of state law
• Differences in sources of legal protection:
  – State constitution
  – State statute
  – Judicial decisions
Pew Study: Legal Protections for State Pension & Retiree Health Benefits

- A fifty state survey of:
  - The source of legal protection in each state;
  - Which pension features are protected; and
  - Which plan participants are entitled to that protection

- Full study is available [here](#)
Summary of Findings

- Source of protection:
  - Judicial decision(s) (28 states)
  - State constitution (8 states)
  - State statute (6 states)
  - Combination (8 states)
Which Pension Features are Protected and for Whom?

- Accrued benefits (all 50 states, but not D.C.)
  - At time participation begins (22 states)
  - Once vested (9 states)
  - Once age and service requirements met (4 states)
  - Once retired (2 states)
  - Something else (13 states)
Which Pension Features are Protected and for Whom?

- The rate of future accrual
  - Not protected (16 states)
  - No legal guidance (13 states)
  - For all participants (11 states)
  - Limited (7 states)
  - For vested participants (3 states)
What about COLAs?

• An underdeveloped area of public pension law:
  – In more than half the states (28), there is no legal guidance
• Of the remaining states:
  – Other (8 states)
  – Not protected (6 states)
  – For all participants (5 states)
  – Only accrued COLAs (4 states)
Can Fiscal Distress Change the Result?

- Only 2 reported cases that rely solely on the police power to justify otherwise impermissible pension changes
  - Both in Rhode Island Superior Court
- Arizona and Illinois Supreme Courts have each held that the police power is unavailable
An Update on the California Rule

- Colorado and New Hampshire have reversed adherence to the rule

- Recent *Cal Fire* decision distinguished between deferred compensation features of pension and the purchase of service credit, but did not revisit core holding