SUPREME COURT OF LOUISIANA

No. 2004-CA-0227

LOUISIANA MUNICIPAL ASSOCIATION, ET AL.

VERSUS

JAN 19 2005

THE STATE OF LOUISIANA AND
THE FIREFIGHTERS' RETIREMENT ASSOCIATION

CALOGERO, Chief Justice CONCURS AND ASSIGNS WRITTEN REASONS:

This decision rejects a constitutional challenge to the system set up by the Louisiana Legislature for the purpose of fulfilling its responsibilities relative to the Firefighters' Retirement System, a Louisiana constitutional obligation to "establish a method of actuarial valuation to be employed" to attain and maintain the actuarial soundness of each state and statewide retirement systems, as required by Art. 10, § 29(E)(1). Under the system put in place by the Legislature and approved by this court in this case, the Firefighters Retirement System is funded by three sources: (1) contributions of employees equal to eight percent of salary excluding overtime, (2) dedicated tax revenues from a pool of seven-tenths of one percent of the Insurance Premium Tax Fund that the Firefighters Retirement System shares with two other retirement systems, and (3) contributions from the firefighters' employers[1] that vary from year to year in the amount necessary to make up the difference between the amounts collected from the first two sources and the amounts needed to achieve actuarial soundness.[2]

I write separately for the purpose of pointing out that, despite the fact that the system adopted by the Legislature is not unconstitutional as written or as applied (for

[1] Generally, this group includes municipalities and various fire districts.

[2] The contribution of the firefighters' employers has increased from nine percent for all years prior to 2002, to 25.25 percent of payroll in 2003.

the reasons more fully explained in the majority opinion), the record facts in this case demonstrate that the system, as it is currently structured, places a difficult, if not impossible, burden on firefighters' employers that could easily become insurmountable in the coming years. In fact, the system today presents a threat to the fiscal integrity and survival of many of these employers who are plaintiffs in this action, if that has not already occurred. Of course, the Legislature has the power and authority to structure the system (and the solution) as it deems wise, provided it responds to the Constitutional mandate to attain and maintain actuarial soundness of the system. The variety of options is as broad as legislators' ingenuity will permit, however restricted that may be by the political realities, be it by appropriation of necessary additional monies from the State's general fund, tapping different and additional tax sources, adjusting the required respective contributions as are currently in place, or any other permissible legal changes affecting the funding of the Firefighters' Retirement System.

SUPREME COURT OF LOUISIANA

NO. 04-CA-0227

LOUISIANA MUNICIPAL ASSOCIATION, PARISH OF JEFFERSON, ET AL.

VS.

JAN 19 2005

STATE OF LOUISIANA AND THE FIREFIGHTERS' RETIREMENT SYSTEM

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, FIFTH CIRCUIT, PARISH OF JEFFERSON

JLW **WEIMER, J.**, concurring in part.

I concur in the result and agree with the concurrence of Chief Justice Calogero. Additionally, I agree with the concurrence of Justice *ad hoc* Lanier which addresses the effect of the repeal of the statutory state guarantee.

SUPREME COURT OF LOUISIANA

NO. 04-CA-227

LOUISIANA MUNICIPAL ASSOCIATION, THE PARISH OF JEFFERSON, LOUISIANA, ET AL.

JAN 19 2005

VERSUS

STATE OF LOUISIANA AND THE FIREFIGHTERS' RETIREMENT SYSTEM

APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT, FOR THE PARISH OF EAST BATON ROUGE HONORABLE TIMOTHY E. KELLEY, JUDGE

KNOLL, Justice, dissenting

This case concerns the percentage rate local government employers with employees in the Firefighters Retirement System ("FRS") must contribute to the FRS. For the following reasons, I respectfully dissent from the majority opinion and find under a statutory analysis the more specific provisions of La. R.S. 11:2262(D)(1) prevail over the general provisions of La. R.S. 11:103. I therefore would reverse the district court's declarations of unconstitutionality, vacate the permanent injunction, and remand this case to the district court for further proceedings.

I find it appropriate to first comment that I recognize this is a difficult case with an intricate statutory history. The statutory scheme itself is difficult reading and tends to be problematic in application. The district court's task was made more difficult by the plaintiffs' alternative attack raising serious constitutional issues, some of which were extraneous to the determination of the employer contribution rate, which is the sole focus of the plaintiffs' litigation. The extraneous issues pertaining to the funding of the FRS have no bearing in determining the employer rate of contribution. The district court's ruling on these extraneous issues constituted dicta and were premature. Thus, I would reverse and set aside these rulings of unconstitutionality.

Having said this, I will address how, in my view, the employer contribution rate is resolved under a statutory analysis.

Title 11 of the Louisiana Revised Statutes, known as the "Louisiana Public Retirement Law," consolidates "public retirement law [into one title] in order to effectively comply with the mandate of Article X, Section 29(E) of the Constitution of Louisiana to maintain public retirement systems on a sound actuarial basis." La. R.S. 11:1 (2004). Within this title exist two statutes which appear to govern employer contributions to the FRS, namely, La. R.S. 11:103(C) and 11:2262(D)(1).

Defendants rely upon La. R.S. 11:103 to support their claim that the employer contribution rate to the FRS is a fluctuating nine percent rate, whereas, the plaintiffs rely upon La. R.S. 11:2262(D)(1) to support their assertion the employer contribution rate to the FRS is a strict, mandatory nine percent rate. Arguably, it appears both parties are correct in their assertions.

La. R.S. 11:103(C) provides:

> C. The net direct actuarially required employer contribution for each fiscal year, commencing with fiscal year ending 1997, shall be that dollar amount equal to the contribution rate specified in Subparagraph (2)(b) of Subsection C, if any, increased by the cost itemized in Paragraph C(1), reduced by the contributions itemized in Paragraph C(2), rounded to the nearest one-quarter percent:
>
> (1) The gross required employer contribution as provided in Paragraph B(1) of this Section.
>
> (2) Elements of the gross employer contributions:
>
> (a) Dedicated ad valorem taxes and revenue sharing funds.
>
> (b) *Targeted portion* of the net direct employer's contributions:
> (i) Firefighters' Retirement System -- 9%
> (ii) Municipal Police Employees' Retirement System -- 9%
> (iii) Sheriffs' Pension and Relief Fund -- 7%
> (iv) *Each rate* set forth in this Subparagraph *is to be treated as a **fixed** rate **unless** a higher or lower rate* results from application of the provisions of this Section in its entirety.
>
> (c) Dedicated assessments against insurers. Such amounts, excluding amounts paid for funding of mergers, to be the lesser of available funds or cost stated in C(1) reduced by contributions

> stated in C(2)(a) and C(2)(b) but in no event shall be less than zero. (Emphasis added).

La. R.S. 11:2262(D) provides, in pertinent part:

> D. Pension accumulation fund
>
> The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and benefits payable from *contributions made by employers*. Contributions to and payments from the pension accumulation fund *shall be made* as follows:
>
> (1) In addition to the assessment collected above, *each municipality, parish, or fire protection district* which has employees on its fire protection force who become members in the Firefighters' Retirement System ***shall*** contribute an amount equal to *nine percent* of the earnable compensation excluding overtime but including state supplemental pay, of each firefighter eligible for membership in the Firefighters' Retirement System and shall remit this amount monthly to the Firefighters' Retirement System. (Emphasis added).

When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the Legislature. La. Civ. Code art. 9 (2004); *Lockett v. State, Through Dept. of Transp. and Development*, 03-1767, p. 3 (La. 2/25/04), __ So.2d __. Reading the statutory provisions as written, La. R.S. 11:103 sets forth a formula devised to calculate the employer's contribution to the FRS and describes the nine percent rate at issue in this case as a "targeted portion." La. R.S. 11:103(C) also allows its targeted portion/rate to fluctuate higher or lower if a higher or lower rate results from application of the provisions of La. R.S. 11:103 in its entirety. In essence, La. R.S. 11:103(C) provides for a fluctuating target rate.

On the other hand, La. R.S. 11:2262(D)(1) specifically provides "each municipality, parish, or fire protection district...shall contribute an amount equal to nine percent of the earnable compensation...." Because the word "shall" is mandatory, this statutory provision creates a strict nine percent employer contribution rate, rather than a rate that can fluctuate higher or lower. *See* La. R.S. 1:3 (2004).

Under La. R.S. 11:2262(D)(1), an employer has to pay the nine percent rate, because the La. R.S. 11:2262(D)(1) nine percent rate cannot fluctuate. Accordingly, there does appear to be a conflict between these two provisions.

Contrarily, the district court found: "La. R.S. 11:2262(D)(1) sets a target rate, which the formula in La. R.S. 11:103 strives to meet. The combination of the two companion statutes allows the actuary to target the *baseline* under La. R.S. 11:2262(D)(1) while concurrently preserving the right to ultimately formulate the rate under La. R.S. 11:103." Thus, it held: "La. R.S. 11:2262(D) and 11:103 must be read together as setting a nine percent target rate that may fluctuate higher or lower." I find this reasoning flawed. In order to achieve this compatibility between the two statutes, the words "baseline" or "minimum" have to replace the word "shall" in La. R.S. 11:2262(D)(1) as though "shall" did not exist in the wording of 11:2262(D)(1), which clearly provides the employers: ***shall*** contribute an amount equal to *nine percent.* The majority opinion simply expounds upon this error. Of importance, La. R.S. 11:103(C)(2)(b)(iv) *does not* preserve the mandatory nine percent rate required in La. R.S. 11:2262(D)(1), because it specifically provides "each rate set forth in this Subparagraph is to be treated as a fixed rate *unless* a higher or lower rate results from the application of the provisions of this Section in its entirety." The specific provisions of section 11:103(C)(2)(b) do not apply because the employer contribution rate is specifically provided for in 11:2262(D)(1) at a mandatory rate of nine percent. Reading the statutes together and replacing the "shall" with "baseline" or "minimum" allows the employer contribution rate to rise above the mandated nine percent rate as in this case, or even fall below the nine percent rate, rendering the mandatory nine percent rate of La. R.S. 11:2262(D)(1) completely ineffective.

Significantly, the district court reached this conclusion because it found the application of La. R.S. 11:3 would resolve the issue. The court stated "an important statute to consider in resolving the issue at hand is La. R.S. 11:3." This is where the district court fell into error and skewed its reasoning. La. R.S. 11:3 sets forth the rules of interpretation a court must employ *when a conflict exists between the provisions contained in Title 11 and the provisions contained in separate laws*, i.e., laws outside of Title 11. The mandatory fixed nine percent rate of La. R.S. 11:2262(D)(1) and the targeted fluctuating rate of La. R.S. 11:103 are not contained in separate laws; both laws are contained in Title 11. The issue of the proper rate to apply, i.e., the fixed nine percent or the fluctuating rate, is a conflict *within* Title 11. Therefore, La. R.S. 11:3 is not applicable.

Because the district court relied upon La. R.S. 11:3, a discussion of the history of 11:3 is appropriate, which further demonstrates why it is not applicable in resolving the employer contribution rate. La. R.S. 11:3 was enacted in 1988 by 1988 La. Acts 81 along with La. R.S. 11:103. At that time, the provisions now designated as La. R.S. 11:2262(D)(1) were contained in La. R.S. 33:2160(D)(1), and until 1991 when the Legislature redesigned La. R.S. 33:2160(D)(1) as La. R.S. 11:2262(D)(1), these provisions existed outside of Title 11 as separate laws. Further problematic with the district court's reliance upon La. R.S. 11:3 is there was never a conflict between La. R.S. 11:103(C)(2)(b) and La. R.S. 33:2160, because at the time of its enactment La. R.S. 11:103(C)(2)(b) provided:

> (b) *Fixed* portion of the net direct employer contributions:
> (i) Firefighters' Retirement System–9%
> (ii) Municipal Police Employees' Retirement System ...
> (iii) Sheriffs' Pension and Relief Fund ...

Therefore, both La. R.S. 11:103(C)(2)(b) and La. R.S. 33:2262(D)(1) provided for a strict, fixed nine percent employer contribution rate, and neither provided for a targeted fluctuating rate.

The conflict between La. R.S. 11:103(C)(b)(2) and La. R.S. 11:2262(D)(1) did not arise until 1997, when the Legislature enacted 1997 La. Acts 1293, which amended La. R.S. 11:103(C)(2)(b), in the introductory paragraph, by substituting "Targeted" for "Fixed" and added item (C)(2)(b)(iv). At the time the conflict arose, the provisions of La. R.S. 11:2262(D)(1) *no longer existed as separate laws outside of Title 11, making La. R.S. 11:3 inapplicable to resolve the conflict.* Apparently, the district court felt that La. R.S. 11:103(C)(b)(2) has always provided as it does today for a fluctuating rate, and this would further explain why the district court fell into error.

The district court reasoned that "interpreting La. R.S. 11:2262 as being the sole, mandatory contribution rate of employers would, in effect, render the formula for actuarial soundness found in La. R.S. 11:103 meaningless...." On the other hand, interpreting the mandatory rate provided in La. R.S. 11:2262(D)(1) as a targeted fluctuating rate would, in effect, render the legislative mandated fixed nine percent rate meaningless.

The bottom line is the statutory conflict between La. R.S. 11:2262(D)(1) and 11:103(C)(2)(b)(iv) governing the employer contribution rate to the FRS is the problematic issue to resolve.

One of the ways to allow the La. R.S. 11:103 formula to apply to the FRS is for this Court to interpret the enactment of 1997 La. Acts 1293 as an implied repeal of La. R.S. 11:2262, the fixed rate. Under general rules of statutory construction, the latest expression of the legislative will is considered controlling and prior enactments

in conflict are considered as tacitly repealed in the absence of an express repealing clause. La. Civ. Code art. 8 (2004); *State v. Board of Com'rs of Caddo Levee Dist.*, 175 So. 678 (La. 1937); Norman J. Singer, *Sutherland Statutes and Statutory Construction* § 23:9 (6th ed. 2002). In accordance with such construction, La. R.S. 11:103(C)(2)(b)(iv) would be controlling in this matter as the latest substantive expression of legislative will. Consequently, the enactment of La. R.S. 11:103(C)(2)(b)(iv) in 1997 La. Acts 1293 would act as an implied repeal of La. R.S. 11:2262(D)(1).

However, this interpretation is problematic because a presumption exists against the implied repeal of a statute, founded upon the doctrine the Legislature is presumed to envision the whole body of the law when it enacts new legislation. *See* Norman J. Singer, *Sutherland Statutes and Statutory Construction* § 23:10, 487 (6th ed. 2002); *see also*, *Lockett*, 03-1767 at p. 5. When a newly enacted statute is silent on a previously existing statute, the indication is the Legislature did not intend to repeal the existing statute. Singer, *supra*, § 23:10, p. 487. Furthermore, there is also the assumption that existing statutory law is representative of popular will, and this too reinforces the presumption against its alteration or repeal. Singer, *supra*, § 23:10, p. 487

In this case, 1997 La. Acts 1293 is silent as to La. R.S. 11:2262, i.e., it does not expressly repeal La. R.S. 11:2262(D)(1). To further bolster this position I note that significantly, La. R.S. 11:2262(D) has been amended as if La. R.S. 11:2262(D)(1) was not repealed. *See* 719 La. Acts 2003. Although this enactment did occur after the filing of this suit, the trial court referred to and considered Act 719 in its reasons for judgment. In Act 719, the legislature amended and reenacted La. R.S. 11:2262(D)(2) to correct two citations of law regarding recovery of delinquent

contributions that erroneously referred to previously repealed statutes, i.e. former La. R.S. 33:2160(D)(1) which was redesignated by the Legislature in 1991 La. Acts 74 as La. R.S. 11:2262. Although technical in nature, this reenactment now limits the right of the Firefighters' Retirement System to pursue collection of delinquent employer contributions to suits for collection of the employer contribution required by La. R.S. 11:2262(D)(1), which is "nine percent of the earnable compensation...of each firefighter eligible for membership in the FRS."

With the presumption against implied repeal in mind, the court must determine if there is a statutory analysis that would reconcile both provisions, giving effect to each, and thereby avoiding an implied repeal.

La. Civ. Code art. 13 provides, where two statutes deal with the same subject matter, they should be harmonized if possible. *Kennedy v. Kennedy*, 96-0732, p. 3 (La. 11/25/96), 699 So.2d 351, 358. However, if there is a conflict, the statute specifically directed to the matter at issue must prevail as an exception to the statute more general in character. *Kennedy*, 96-0732 at p. 3; 699 So.2d at 358. In this case, La. R.S. 11:103 acts as a general statute governing employer contributions to *all* "state and statewide public retirement systems whose benefits are not guaranteed by Article X, Section 29(A) and (B) of the Louisiana Constitution," whereas La. R.S. 11:2262(D)(1) acts as an exception to La. R.S. 11:103's general provisions. This provision specifically governs the contributions to the pension accumulation fund of "each municipality, parish or fire protection district which has employees on its fire protection force who become members in the FRS...." A literal reading of both statutes reveals La. R.S. 11:2262(D)(1) is more specific than La. R.S. 11:103(C) to the facts of this case which specifically involves the employer contributions of municipalities, parishes, and fire protection districts to the FRS.

Additionally, such an interpretation allows La. R.S. 11:103 to retain its authority as a general provision, which will apply in all "unguaranteed" state and statewide retirement system cases *unless there exists a legislative mandated rate, as in this case.* Indeed, the Legislature has enacted laws which specifically require the employers who do not have a mandated fixed rate to make contributions based upon the amounts determined under La. R.S. 11:103, such as La. R.S. 11:2227(D)(1)(a), mandating "each municipality which has employees on its police force who become members in [the Municipal Police Employees'] retirement system shall contribute the employer contribution rate as determined in R.S. 11:103...." Moreover, this interpretation maintains the effectiveness of the La. R.S. 11:2262(D)(1) mandatory, fixed nine percent rate.

The majority opinion, like the district court, erroneously reads these two statutes as compatible. While the majority's reasoning is persuasive, it is flawed. The majority reads into the statutes "what the legislature understood" and reads out the mandatory employer contribution provision of La. R.S. 11:2262(D)(1) as though it is part of a fluctuating rate in La. R.S. 11:103. This interpretation essentially reads out the language of La. R.S. 11:103(C)(2)(b)(iv) allowing a lower rate for the net direct employer contributions if a "lower rate results from application of the provisions of this Section in its entirety," and effectively misinterprets the mandatory fixed rate of nine percent as though it was a baseline or minimum. Such a reading is an absurd interpretation because it allows the employer contribution rate to far exceed the mandatory nine percent rate clearly intended by the Legislature.

In turn, the absurd consequences resulting from this interpretation will cause local municipalities to severely cut, if not eliminate, fire protection to its citizens so

it can pay retirement benefits. Clearly, these absurd consequences were not intended by the Legislature.

The majority opinion fails to recognize one of the fundamental tenants of statutory interpretation namely, statutory interpretation cannot result in absurd consequences and must give way to a reasonable result. Indeed, this is the positive law on statutory interpretation in our Civil Code: Laws should be applied as written and no further interpretation may be made in search of the intent of the legislature when the law is clear and unambiguous and its application *does not lead to absurd consequences*. La. Civ. Code. art. 9. The function of the court is to interpret the laws so as to give them the meaning which the lawmakers obviously intended them to have and not to construe them so as to give them absurd or ridiculous meanings. *Webb v. Parish Council of Parish Of East Baton Rouge*, 47 So.2d 718, 720 (La. 1950). In construing a statute, the object is to ascertain legislative intent, and where literal construction would produced absurd results, the letter must give way to the spirit of the law, and the statute construed so as to produce a reasonable result. *Bradford v. Louisiana Public Service Comm'n*, 179 So. 442, 446 (La. 1938).

The problems concerning the actuarial soundness of the FRS were not caused by the employers of the firefighters. But yet under the majority interpretation, the municipality with its limited resource for funds is now held responsible to make the FRS actuarially sound. In my view, the FRS has raised serious constitutional issues

against the state in their pending cross-claim[1] against the State that should be heard and disposed of on remand to the district court.

In conclusion, I find La. R.S. 11:2262(D)(1) prevails in this matter as an exception to the general provisions of La. R.S. 11:103. I would reverse the district court's declarations of unconstitutionality, vacate the permanent injunction, and remand this matter to the district court for further proceedings on the FRS's cross-claim.

[1] In its cross-claim, the FRS stated:

> AND NOW, while reserving all rights accorded to its position as defendant and reasserting the admissions, denials, and allegations set forth herein above in Paragraph Nos. 1 through 46, inclusive, [FRS] does simultaneously assume the position of cross-claimant against the State of Louisiana. For purposes of this cross-claim only, FRS does hereby adopt by reference and assert all allegations set forth in Paragraph Nos. 1 through 103, inclusive, of petitioners, Amended and Restated Petition, except Paragraph Nos. 99, 100, and 101 thereof. FRS does hereby pray for all contributions and interest that are owed to FRS as a result of the matter that is made the subject of petitioners' Amended and Restated Petition. Additionally, FRS assumes the position of cross-claimant against the state for all amounts due to FRS as set forth more fully below.

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v.

**STATE OF LOUISIANA AND
THE FIREFIGHTERS' RETIREMENT SYSTEM**

**APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
FOR THE PARISH OF EAST BATON ROUGE
HONORABLE TIMOTHY E. KELLEY, JUDGE**

WL p-ac LANIER, Justice *Ad Hoc*, concurring in part and dissenting in part.

I agree that (1) the net employer's contribution rate to the FRS shall be fixed by PRSAC on an annual basis pursuant to the formula set forth in La. R.S. 11:103; (2) the net employer's contribution rate provided for in La. R.S. 11:103 is a variable or fluctuating annual rate that may be fixed above or below 9% as financial circumstances may require and that the variable rate is designed to eliminate deficiencies or excesses in the annual funding of the actuarial soundness of the FRS; (3) because the net employer's contribution rate for the FRS is such a variable, the judgment of the trial court permanently enjoining the FRS from collecting a net employer's contribution in excess of 9% is in error and should be reversed; (4) the legislative delegation of authority to PRSAC found in La. R.S. 11:103, 104 and 121 *et seq.* is not unconstitutional and the trial court declaratory judgment to the contrary should be reversed; and (5) the questioned acts of the legislature and the statutes they amended are facially constitutional and the trial court declaratory judgments to the contrary should be reversed.

I agree that Act 645 of 1991 that repealed La. R.S. 33:2165 is facially

constitutional. The majority opinion does not fully discuss the effect of the repeal. Accordingly, I concur with reasons on this issue.

I do not agree with the majority's disposition of the issue of whether La. R.S. 11:103 and 104 were unconstitutionally applied and/or administered. Accordingly, I dissent on this issue with reasons.

EFFECT OF REPEAL OF STATUTORY STATE GUARANTEE

La. R.S. 33:2165, renumbered as La. R.S. 11:2269, provided that "(t)he state of Louisiana hereby guarantees benefits payable to a member of this system or a retiree or to his lawful beneficiary." Members, retirees and beneficiaries are separate categories of persons provided for differently in the FRS. See definitions in La. R.S. 11:2252. Black's Law Dictionary, p. 711 (7th Ed. 1999) defines a guarantee as "(t)he assurance that a contract ... will be carried out." A state guarantee is backed by the "full faith and credit" of the state. Vol. 9, Records of the Louisiana Constitutional Convention of 1973: Convention Transcripts, Dec. 5, 1973, comments of Delegate Aertker on page 2565 and Delegate Lowe on page 2575. Thus, a guarantee is a nominate, accessory contract of suretyship as provided for in La. C.C. art 3035, *et seq.*

The following appears in the section entitled "State Guarantee Repealed" in the majority opinion:

> The legislature repealed former La. R.S. 33:2165 in its entirety pursuant to Acts 1991, No. 645, effective July 1, 1991. This Act repealed the state guarantee of benefits to FRS members and their beneficiaries. After the effective date of this act, the formula described in La. R.S. 11:103, applicable to public retirement systems whose benefits were not guaranteed by the state, and not the formula in La. R.S. 11:102, applicable to state guaranteed systems, was used for the calculation of the employer contribution to the retirement system.
> (Footnote deleted).

A review of Act 645 of 1991 shows that it does not expressly state that it is intended to be retroactive. Accordingly, as a matter of statutory construction, it cannot be given retroactive effect. La. R.S. 1:2; La. C.C. art. 6; R. Lamonica and J. Jones, 20 La. Civ. Law Treatise, Legislative Law and Procedure, §6.4, pp. 113-125 (2004). Further, as a matter of constitutional law, an act of the legislature may not be applied retroactively if it would impair contractual obligations or disturb vested rights. *Smith v. Board of Trustees of Louisiana State Employees Retirement System*, 2002-2161, p. 7 (La. 6/27/03), 851 So. 2d 1100, 1105.

It is not completely accurate to say that Act 645 of 1991 repealed the state statutory guarantee of benefits or that the FRS became a public retirement system whose benefits are not guaranteed by the state after the enactment of Act 645 of 1991. After the effective date of Act 645, the state's guarantee (suretyship) remained in full force and effect for the members, retirees and beneficiaries of the FRS who had accrued (vested) benefits prior to the effective date of the Act. Only those benefits [retirement rights] that accrued after the effective date of the Act are no longer covered by the state guarantee. The Act had no effect on the state's guarantee of benefits that accrued prior to the effective date of the act because of statutory and constitutional law.

Finally, the repeal of this statutory guarantee does not control whether La. R.S. 11:102 or 11:103 applies to the FRS as asserted by the majority opinion. That issue is controlled by whether or not the FRS is a state or statewide system whose benefits are constitutionally guaranteed by La. Const. art. X, § 29(B). *See* La. Const. art. X, § 29(A), (B), (E)(2) and (E)(3) and La. R.S. 11:102A and 11:103A.

WERE L.A. R.S. 11:103 AND 104, AS AMENDED, UNCONSTITUTIONALLY APPLIED AND/OR ADMINISTERED

The record on appeal reveals serious questions about how the funding formula for the FRS has been administered in the past. In addition, I agree with the observation of Chief Justice Calogero in his concurring opinion that the funding formula for the FRS, as it is currently structured, "places a difficult, if not impossible, burden on firefighters' employers that could easily become insurmountable in coming years." (Emphasis added).

La. C.C. P. art. 1876 provides as follows:

> The court may refuse to render a declaratory judgment or decree where such judgment or decree, if rendered, would not terminate the uncertainty or controversy giving rise to the proceeding.

After considering how the FRS funding formula was administered in the past, how it is currently structured, and what may be the potential future problems, it is my opinion that a declaratory judgment on this issue will not reasonably terminate the uncertainty or controversy involved. This issue should be decided by a full trial on the merits in an ordinary proceeding; a declaratory judgment on it should not be rendered.

Accordingly, I respectfully dissent from the majority ruling on this issue.

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THE STATE OF LOUISIANA AND THE FIREFIGHTERS' RETIREMENT ASSOCIATION

PC **CALOGERO, Chief Justice CONCURS AND ASSIGNS WRITTEN REASONS:**

This decision rejects a constitutional challenge to the system set up by the Louisiana Legislature for the purpose of fulfilling its responsibilities relative to the Firefighters' Retirement System, a Louisiana constitutional obligation to "establish a method of actuarial valuation to be employed" to attain and maintain the actuarial soundness of each state and statewide retirement systems, as required by Art. 10, § 29(E)(1). Under the system put in place by the Legislature and approved by this court in this case, the Firefighters Retirement System is funded by three sources: (1) contributions of employees equal to eight percent of salary excluding overtime, (2) dedicated tax revenues from a pool of seven-tenths of one percent of the Insurance Premium Tax Fund that the Firefighters Retirement System shares with two other retirement systems, and (3) contributions from the firefighters' employers[1] that vary from year to year in the amount necessary to make up the difference between the amounts collected from the first two sources and the amounts needed to achieve actuarial soundness.[2]

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the reasons more fully explained in the majority opinion), the record facts in this case demonstrate that the system, as it is currently structured, places a difficult, if not impossible, burden on firefighters' employers that could easily become insurmountable in the coming years. In fact, the system today presents a threat to the fiscal integrity and survival of many of these employers who are plaintiffs in this action, if that has not already occurred. Of course, the Legislature has the power and authority to structure the system (and the solution) as it deems wise, provided it responds to the Constitutional mandate to attain and maintain actuarial soundness of the system. The variety of options is as broad as legislators' ingenuity will permit, however restricted that may be by the political realities, be it by appropriation of necessary additional monies from the State's general fund, tapping different and additional tax sources, adjusting the required respective contributions as are currently in place, or any other permissible legal changes affecting the funding of the Firefighters' Retirement System.