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Presented by:

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- Respecting my 6 minute allotment, I considered where could I make the most meaningful contribution and decided to focus on my home state of Florida (which can provide some meaningful lessons) and provide a brief summary of some of our pending cases being litigated by my office:
 - Before I do so, I wanted to make two preliminary observations:
 - First, a prediction: in 30 years (most common amortization period) a similar forum will be held to discuss what to do with the overfunded surpluses in our public pension plans, based on all the recent cutbacks/amendments and the lowering of investment assumptions.
 - Second, let's not ignore the important question of *retirement security*. We are focused today on pension funding. What about the underfunded 401(k) balances which will relegate far too many private sector retirees to bleak retirement prospects? NCPERS is engaged in outside the box thinking on this subject involving a cash balance plan that leverages public infrastructure to make it easier for small private sector employers to provide a retirement plan. I invite you to review their website, <http://www.retirementsecurityforall.org/>

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Florida Perspective:

- Florida is a state where many understand the importance of retirement security, given the large number of retirees here. During the recession, public plan retirees could take trips to Disney because they had reliable monthly pensions.
- With a funded ratio of 118% in 2000, FRS had obtained one of the healthiest funding ratios in the nation for public pension plans. Yet, the combination of two facts led to the decline from the 118% funded ratio in 2000 to the current 90% funded ratio today. First, the Legislature established a rate stabilization fund which allowed the surplus to be used to reduce contributions. Second, the markets didn't cooperate during the Great Recession. If I could wave a magic wand, I would establish contribution floors during healthy markets, so that investment earnings can't be used to offset normal costs.
- By contrast, Florida's 400 plus municipal plans are covered by Chapter 112, Florida Statutes. Chapter 112, Part VII, contains useful requirements that would prevent another Prichard, Alabama. For all municipal/local plans, the public employer in Florida is required to fund on an actuarially sound basis (pay the ARC every year; can't exceed 30 year amortization; review by state actuary every three year; actuarial impact statements required for all amendments; 80 – 120 corridor on smoothing; detailed actuarial reporting in annual valuations; no contribution holidays ever).
- Earlier this year, the Florida Supreme Court upheld prospective amendment to FRS which eliminated the COLA for future service and introduced a 3% employee contribution. *Scott v. Williams*, 107 So.3d 379 (Fla. 2013). Importantly, the amendments were not retroactive and protected accrued benefits. My theory is that if the FRS surplus had not been used to during the prior decade, these amendments would not have been necessary.

Observations on currently litigated cases:

- Let's briefly compare the constitutional protections in Texas (Art. XVI, Section 66(d)) for municipal plans "On or after the effective date... may not reduce or otherwise impair benefits accrued by a person..." and Arizona (Art. XXIX, section 1(c)) provides that "public retirement benefits shall not be diminished or impaired."
- U.S. Constitution, Article 1, Section 10: No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

- Section 447.4095, Florida Statutes:

Financial urgency. — In the event of a financial urgency requiring modification of an agreement, the chief executive officer or his or her representative and the bargaining agent or its representative shall meet as soon as possible to negotiate the impact of the financial urgency. If after a reasonable period of negotiation which shall not exceed 14 days, a dispute exists between the public employer and the bargaining agent, an impasse shall be deemed to have occurred, and one of the parties shall so declare in writing to the other party and to the commission. The parties shall then proceed pursuant to the provisions of s. 447.403. An unfair labor practice charge shall not be filed during the 14 days during which negotiations are occurring pursuant to this section.

- Article I, Section 6, Fla. Constitution (creates the fundamental right to collectively bargain): Right to work.—The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.
- Article I, Section 2, Fla. Constitution (protects basis rights, including Equal Protection):

Basic rights. — All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law. No person shall be deprived of any right because of race, religion, national origin, or physical disability.

IF YOU HAVE ANY QUESTIONS OR COMMENTS CONCERNING THIS PRESENTATION, CONTACT KLAUSNER, KAUFMAN, JENSEN & LEVINSON, 10059 NW 1ST COURT, PLANTATION, FLORIDA 33324, (954) 916-1202, FAX (954) 916-1232, WEBSITE, www.robertdklausner.com.