

# **Bond Case Briefs**

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## **PUBLIC PENSIONS - WASHINGTON**

### **Fowler v. Guerin**

**United States Court of Appeals, Ninth Circuit - August 16, 2018 - F.3d - 2018 WL 3893114 - 18 Cal. Daily Op. Serv. 8230**

Public school teachers brought putative class action against Director of the Washington State Department of Retirement Systems (DRS) to return interest that was allegedly skimmed from their state-managed retirement accounts in violation of Fifth and Fourteenth Amendments.

The United States District Court denied teachers' motion to certify a class and granted Director's motion for summary judgment. Teachers appealed.

The Court of Appeals held that:

- Teachers' claim was a claim for a per se taking, rather than a regulatory taking, and thus prudential ripeness test did not apply;
- Core property right for purpose of Fifth Amendment Takings Clause covers interest earned daily;
- Teachers' action was not barred by doctrine of issue preclusion or *Rooker-Feldman* doctrine;
- Teacher's claim was not foreclosed by Eleventh Amendment sovereign immunity; and
- Class could properly be certified as an injunctive relief class.

Public school teachers' claim that Washington State Department of Retirement Systems (DRS) took their property without providing just compensation by withholding interest accrued on their retirement accounts was a claim for a per se taking, rather than a regulatory taking, and thus prudential ripeness test requiring a plaintiff to have sought compensation through state procedures prior to bringing a takings claim in federal court did not apply to teachers' putative class action against DRS, where interest earned on funds in interest-bearing accounts was the private property of the owner of the principal, such that withholding of such interest was a direct appropriation of private property.

The core property right recognized in *Schneider v. California Department of Corrections*, 151 F.3d 1194, for purpose of Fifth Amendment Takings Clause, which is defined by reference to traditional background principles of property law, covers interest earned daily, even if payable less frequently, and regardless of whether a state legislature purports to authorize a state officer to abrogate such common law property right.

Washington Court of Appeals' decisions in public school teachers' action against Washington State Department of Retirement Systems (DRS) challenging DRS's interest rate calculations in their retirement accounts did not resolve issues presented in teachers' federal takings claims, which was whether DRS's refusal to pay daily interest constituted a taking, and thus teachers' federal action was not barred by doctrine of issue preclusion or *Rooker-Feldman* doctrine; state court expressly declined to reach the merits of teachers' constitutional takings claim, its discussion of teachers' entitlement to daily interest turned solely on state statutory law, and its ruling on teachers' claim that DRS rulemaking regarding interest calculation method would effect a taking simply found such claim premature.

Public school teachers' takings claim against Washington State Department of Retirement Systems (DRS), which claimed that DRS took their property without providing just compensation by withholding interest accrued on their retirement accounts, was not foreclosed by Eleventh Amendment sovereign immunity, where teachers were actually seeking an injunction ordering DRS to return savings taken from them, which would have involved applying a computerized formula to DRS electronic records to correct the amount of interest credited to members' accounts, rather than requiring payment of funds from the state's treasury.

Public school teachers' putative class action against Washington State Department of Retirement Systems (DRS) challenging DRS's interest rate calculations in their retirement accounts was not a claim for individualized monetary damages, but rather, sought an indivisible injunction benefiting all class members at once, and thus class could properly be certified as an injunctive relief class; relief sought by class would have required DRS to apply a single formula to its electronic records to correct the amount of interest credited to class members' accounts.