

# **Bond Case Briefs**

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## **PENSIONS - CALIFORNIA**

### **Protect Our Benefits v. City and County of San Francisco**

**Court of Appeal, First District, Division 5, California - March 27, 2015 - Cal.Rptr.3d - 2015 WL 1404952**

Since 1996, retired employees of the City and County of San Francisco (the City) have been eligible to receive a supplemental cost of living allowance (supplemental COLA) as part of their pension benefits when the retirement fund's earnings from the previous year exceeded projected earnings.

On November 8, 2011, City voters passed Proposition C, an initiative measure that, among other things, amended the Charter of the City and County of San Francisco to condition the payment of the supplemental COLA on the retirement fund being "fully funded" based on the market value of the assets for the previous year.

Protect Our Benefits (POB), a political action committee representing the interests of retired City employees, appealed from a superior court order denying its petition for writ of mandate seeking to invalidate this amendment as an impairment of a vested contractual pension right under the contract clauses of the federal and state Constitutions.

The Court of Appeal held that:

- City charter amendment could not be constitutionally applied to employees who retired after effective date of initiative establishing supplemental COLA;
- City charter amendment could be constitutionally applied to employees who retired before effective date of initiative establishing supplemental COLA; and
- City obtained adequate actuarial reports supporting the amendment.

Under the contract clauses of the federal and state constitutions, city charter amendment conditioning retired city employees' supplemental cost of living allowance (COLA) on the retirement fund being "fully funded," based on the market value of the assets for the previous year, could not be constitutionally applied to employees who retired after effective date of the initiative establishing the supplemental COLA, where no comparable advantage was offered to pensioners or employees in return.

City charter amendment conditioning retired city employees' supplemental cost of living allowance (COLA) on the retirement fund being "fully funded," based on the market value of the assets for the previous year, did not violate the contract clauses of the federal and state constitutions as applied to employees who retired before effective date of the initiative establishing the supplemental COLA, even though no comparable advantage was offered to pensioners or employees in return, since employees who retired earlier did not have the same vested rights as employees who retired after the COLA was in effect.