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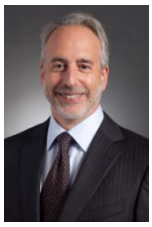
Declarations of Fiscal Emergency: A Viable Option as Cities and Counties Fight to Maintain Essential Services



Holtzman and Cikes respond to Christopher Platten's article, "Declarations of Fiscal Emergency: A 'Dead on Arrival' Means of Limiting Public Pension Costs and Impairing Local Agency MOUs."

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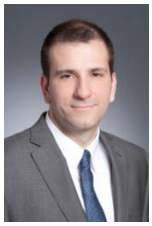

Few would dispute that the magnitude of the challenges faced by local public agencies today are unprecedented. Absent dramatic action, the current economic crisis threatens to turn many agencies into a public version of pre-bankruptcy General Motors — pension and health care providers for retired employees, with some incidental public services. But before public agencies consider bankruptcy or take actions that seriously jeopardize the health and welfare of the residents, they should consider the alternative of declaring a fiscal emergency.

Downward Spiral

The combination of the recent economic downturn, the collapse of the housing market, the fiscal disaster at the state level, rapidly increasing pension costs, the recognition of deferred funding of retirement health costs, and other employee benefit issues has left many California cities on the financial brink. Local government agencies have been hit particularly hard.

Since cities and counties are service providers, 75 to 80 percent of their general-fund operating costs typically are labor-related. Because of rapidly escalating benefit costs and declining revenues, services are being cut at an alarming pace. Libraries, community centers and programs, health, roads, and general government operations have been most at risk. But recently, a number of cities, including those with high crime rates like Oakland, Stockton, and Vallejo, have also been forced to cut police and fire staffing. These public safety reductions lead to demonstrably worse outcomes for the public. And there is little hope for improvement in sight. One sees the same graph in city after city: the top line (personnel-related expenses) is rising at a rate that far exceeds the bottom line (revenue projections). In other words, there is a widening structural gap between costs and revenues.

Liberal or conservative, pro-union or anti-union, these trends should be alarming. Reducing public services not only puts workers out on the street and jeopardizes the security of the remaining employees' benefits, it makes the communities in which they work less desirable and leads to a declining perception (and perhaps reality) of public safety. Ironically, as cities and counties reduce the number of employees, the unfunded liabilities of their pension and retiree health plans remain, and grow as a percentage of payroll. Cities and counties need more revenue; but in the post-Proposition 13 world, most revenue enhancements require a popular vote. Perceptions about the efficiency and

effectiveness of government, combined with declining home values, make it difficult to win these votes, even in cities starving for services. The overwhelming defeat in 2011 of revenue measures in Oakland is emblematic.

The struggle to reduce the costs of government while maintaining at least a modicum of services has become as futile as a dog chasing its tail. By the time the policymakers adopt a balanced budget, the financial picture has worsened, triggering yet another round of cost-cutting.

To make matters more challenging, some of the most expensive benefits — pension costs for example — are often vested, meaning that employees and retirees have a contractual right to the benefits. In some cases, that right is said to accrue from the first day of employment. While public agencies are free to adopt different plans for new employees, the savings from such changes are miniscule in the short run, and therefore insufficient solutions for agencies facing long-term fiscal difficulties.

One way out of this death spiral is bankruptcy. Both vested and other contractual benefits can be discharged in bankruptcy, although unions and retirees may argue otherwise as they fight to maintain or even increase compensation packages. Nearly everyone agrees, however, that bankruptcy should be the very last option. Among other things, access to credit markets is likely to be suspended, the costs of Chapter 9 bankruptcy are very high both in terms of staff time and legal fees, and the stigma of bankruptcy may make new businesses reluctant to locate in the community, depress real estate sales, and generally depress the overall business climate.[1]

This article addresses another tool that cities, counties and other public agencies are increasingly considering to achieve short-term relief from contractual obligations: declarations of fiscal emergency. It must be noted at the outset, however, that emergencies are at best a means to an end — the goal being to allow a public agency to maintain essential services. As Christopher Platten's recent article [2] demonstrates, declarations of emergency are likely to be challenged legally and factually. However, as even Platten is forced to concede, case law developed by the U.S. Supreme Court, and recognized in California, permits government to impair contractual obligations when the public's health and welfare is jeopardized. The battle, which has yet to be fought, is factual in nature: When is the diminution in services so great and so inevitable that the impairment will be upheld?

Declarations of Fiscal Emergency: An Overview

Courts have long recognized that the constitutional prohibitions against the impairment of contracts do not bar a public agency from "exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public" — i.e., a public agency's inherent police powers.[3] Thus, for example, in *Home Building and Loan Assn. v. Blaisdell*, the United States Supreme Court considered the constitutionality of a Minnesota law that restricted mortgage foreclosures during the Great Depression.[4] The court held that the law was valid even though it impaired contract rights, recognizing: "the reservation of state power appropriate to…extraordinary conditions may be deemed to be as much a part of all contracts as is the reservation of state power to protect the public interest in other situations."[5] Indeed, the court found that the state has the power "to give temporary relief from enforcement of contracts in the presence of disasters due to physical causes such as fire, flood, or earthquake," as well as "when the urgent public need demanding such relief is produced by other and economic causes."

Consistent with the above, other courts have likewise recognized that implicit within every public contract is the caveat that the agreement shall not preclude or otherwise hinder the public agency from exercising its inherent police powers for the greater good.[6] This is especially true with respect to contracts governing public employment. As one court noted, “Public employees — federal or state — by definition serve the public and their expectations are necessarily defined, at least in part, by the public interest. It should not be wholly unexpected, therefore, that public servants might be called on to sacrifice first when the public interest demands sacrifice.”[7] Consequently, courts have recognized that public employers may impair their own employee contracts when circumstances justify such an impairment.

The standards for assessing whether a government agency may exercise its police powers to impair contractual obligations have evolved over time. In *Sonoma County Organization of Public Employees v. County of Sonoma*,[8] the California Supreme Court, following *Blaisdell*, identified a four-factor test in determining whether a legislative impairment of a contract violates the federal or state Contract Clause. Those factors include whether (1) the contract modification arises out of an actual emergency; (2) relief from the contract is necessary to protect a basic societal interest; (3) the modification or relief is appropriately tailored to the emergency it was designed to address; and (4) the modification imposed is temporary and limited to the exigency that prompted the legislative response.[9]

These factors are not necessarily absolute. Subsequent decisions have departed from these rigid factors.[10] Indeed, in *United States Trust Co. v. New Jersey*,[11] the United States Supreme Court held that while “the existence of an emergency and the limited duration of a relief measure are factors to be assessed in determining the reasonableness of an impairment,…they cannot be regarded as essential in every case.” Thus, the court held that a public agency may constitutionally impair its own contracts if “it is reasonable and necessary to serve an important public purpose.”[12]

But the devil is in the details. Many public agencies are — or will be — facing circumstances in which they will not be able to provide vital services to the public. Despite broad judicial language defining emergencies, most declarations of emergency in California have been invalidated. And, while a legislative finding of an emergency will be afforded some deference, courts will be less deferential to the decision when a government agency impairs its own contractual obligations.

Not All Emergencies Are Alike

Two sets of contractual relationships that may be the subject of government actions based on emergency powers have been in the news recently: labor agreements and allegedly “vested” post-employment/retirement benefits, such as pension benefits.

Labor agreements. This issue generally arises when a city is locked into a long-term contract and then suffers a steep decline in revenues or a sharp, unanticipated spike in costs, or both. For example, many public agencies entered into contracts shortly after the beginning of the great recession, not anticipating the depth and length of the recession. The decline was exacerbated by two additional elements few anticipated: the rupture of the real estate bubble and resulting massive loss of tax revenue, and the secondary effect of the decline of equity markets on pension costs. But because the negative effects of the recession have dragged on for three years, many (if not most)

public agencies have had an opportunity to renegotiate contracts, so the need for emergency declarations in connection with labor contracts has likely declined — unless, of course, the bottom falls out again.

Post-employment/retirement benefits. Some public agencies have also attempted to modify or alter employee pension benefits, citing their inherent police powers as a basis for authority. Where those efforts have been unsuccessful, it has not been because the courts have rejected the application of fiscal emergency as a legal matter. Rather, it is because the agencies involved have been unable to demonstrate the existence of a true "fiscal emergency" or because agencies were unable to demonstrate that there were no other, less intrusive, alternatives available.

For example, in *Board of Administration v. Wilson*,[13] the legislature changed the manner of funding for the California Public Employees' Retirement System from a "level contribution" system, by which payments flowed to the retirement system fund as liability was incurred, to an "in arrears" system, where contributions were not paid during the same fiscal year that employee services were rendered. As a result, the contribution of hundreds of millions of dollars that would otherwise have been paid into the retirement fund was postponed for at least six months, resulting in lost earnings to the retirement plan in general. When the PERS board challenged the funding change, the state argued that the modification was necessary to address its ongoing fiscal emergency.

In rejecting this defense, the court — while assuming the "existence of a fiscal emergency" — found that, prior to implementing the financing changes, the state failed to obtain actuarial input from the PERS board, failed to cite "evidence of any effort to deal narrowly with the exigencies of the emergency," and failed to give "considered thought to the effect the emergency provisions might have on PERS or the possibility of alternative, less drastic, means of accomplishing its goals."[14] Accordingly, the court concluded, "PERS members have a contractual right to an actuarially sound retirement system and the 'in arrears' pension financing unconstitutionally impaired that contractual right."[15]

In *United Firefighters of Los Angeles v. City of Los Angeles*,[16] the city attempted to place a 3 percent cap on any cost-of-living increases provided under the city's pension plan. Previously, cost-of-living increases were based on changes in the Consumer Price Index, and were not subject to any maximum increase. Two employee organizations challenged the cap, arguing that it impaired a vested right. In arguing that the contractual impairment was reasonable and necessary to serve a public purpose, the city "took the position that unexpected and unforeseen increases in the rate of inflation had caused pension costs to escalate sharply, exceeding salary increases." The city further argued that, "the enactment of Proposition 13 destroyed the traditional funding mechanism for the pension systems and these factors combined to create a budgetary crisis in an era of increasingly scarce public revenue."[17]

The court rejected these arguments, finding that the city's desire to "spend city revenues on other things they deemed more important…never justifies the impairment of a public entity's contractual obligations."[18] The court also noted that capping cost of living increases bore "no material relation to the theory of a pension system and its successful operation," given that "the theory of a pension system is affording retirees with a reasonable degree of economic security, and the sole legitimate purpose of a cost of living adjustment is the preservation of a retiree's standard of living."[19]

But the *Wilson* and *United Firefighters* decisions were products of their time, based on underdeveloped facts— and facts that are quite different from the problems public agencies are currently facing. Public agencies must now address severe underfunding of pension plans — a problem that has a direct nexus to the security of future pension benefits. And the problem is not going away any time soon. As one expert recently noted, "Pension fund assets are rebounding from the 2008-09 market crash, but not fast enough to make up for the lost growth and to close the gap of what is needed to fulfill retirement promises to public employees."[20] Consequently, a number of public agencies across the country (not just in California) are exploring various options to reform pensions.[21]

The Evidence Necessary to Prove an Emergency

California case law addressing fiscal emergencies is a bit of an enigma. On the one hand, the principles allowing the use of emergency powers to impair contracts are settled and parallel the principles articulated by the U.S. Supreme Court. Moreover, California cases have often repeated that the state constitutional protection of contracts is identical to the protection of the federal constitution. Yet, when California public agencies have invoked emergency powers, they often have been rebuffed due to insufficient evidence of an emergency, insufficient nexus between the emergency and the actions taken, or failure to explore alternatives. Given the fact that many California cities and counties, and pension plans, are facing unprecedented fiscal challenges and diminution in services, the evidence is there. But it must be marshaled properly.

To justify its use of emergency powers, a public agency should prepare a comprehensive set of legislative findings based upon *evidence*. This is not a simple undertaking. At a minimum, that document should show the following:

(1) An actual emergency exists. A common argument raised by most employee advocates is that a fiscal emergency is not a true emergency because the depletion of public funds usually occurs over an extended period of time and largely stems from a public employer's own decisions, including labor relations decisions. Accordingly, advocates claim that such circumstances do not qualify as an "emergency," which courts have defined in other contexts as "an unforeseen situation calling for immediate action." [22]

But not all emergencies occur in an instant, like an earthquake. A public employer's dire financial condition — which worsens over an extended period of time — may, in some cases, qualify as an emergency requiring immediate action. This is especially true where an agency's resources are stretched so thin that it can no longer provide essential services to the public and/or maintain those services at acceptable levels. This type of "service level emergency" may, in an appropriate case, justify the impairment of certain contractual obligations.

For example, in *Subway-Surface Supervisors v. N.Y.C. Transit Authority*,[23] the New York Court of Appeals upheld the deferral of a negotiated wage increase where the city's fiscal emergency would have rendered it unable to "provide essential services to its inhabitants or meet its obligations to the holders of outstanding securities," and where, without cuts, the city would not have been able to pay employee salaries or its vendors and would have defaulted on payments due on other outstanding obligations.[24]

Similarly, in *Buffalo Teachers Federation v. Tobe*,[25] the Second Circuit Court of Appeals upheld a wage freeze imposed by the city after forecasting an increase in its budget deficit from $7.5 million to $97-127 million in four years.

The court had no difficulty concluding that the wage freeze was reasonable and necessary. The city had already exhausted other drastic measures, including school closings and layoffs, and only implemented the wage freeze as a last resort. Turning to whether a more moderate course was available that would have alleviated the crisis, the court found that the city's only other option was the elimination of more municipal jobs and school closures. Based on these facts, the court found that the wage freeze was both reasonable and necessary to address the "very real fiscal emergency in Buffalo."[26]

As the foregoing illustrates, a public agency's "fiscal crisis" may, in an appropriate case, qualify as an emergency justifying the impairment of certain contractual obligations. However, this will typically require a showing that, absent a declaration of fiscal emergency, public services will be cut in a manner that jeopardizes the health, safety or viability of the community. Alternatively, as in the case of pension obligations, it may show that the public agency is unlikely to be able to continue to make required contributions while, at the same time, fulfilling its duty to the public..

(2) The agency has taken reasonable steps to address the problem prior to invoking the emergency. Implicit in the concept of emergency is the notion that the public agency must have taken reasonable steps to avoid the emergency. Thus, if, for example, the agency has excess reserves, a court would undoubtedly look to those reserves. Also, if there are matters which can be negotiated without impairing a contract, a court might look to those as well.

Some have argued that a public agency must drain all its reserves, sell all of its property, and essentially be insolvent before an emergency can be properly declared. While the case law does not speak directly to this issue, it is simply illogical to assert the agency must take imprudent actions, such as draining its workers' compensation reserve, before declaring an emergency. Aside from the fact that the agency would be trading one emergency for another, one-time money is rarely sufficient to plug large operating deficits for very long.

And critically, a fiscal emergency does not necessarily require that a public agency be on the verge of insolvency. Declarations of emergency are an attempt to turn the ship around *before* it hits the iceberg. The distinction is that public agencies should not need to prove they have plundered every reserve and taken other irresponsible actions in order to show they face an emergency. Nor should they need to prove, as one recent piece of state legislation suggests, that they are on death's doorstep.[27] As a public finance expert recently put it in an arbitration: "You shouldn't need to wait until the patient is dead before you call the doctor."

Depletion of available reserves would have the same effect. Use of this one-time money to fund ongoing operations only increases the likelihood of insolvency. As the court presiding over the Vallejo bankruptcy proceedings explained, "In prior fiscal years, Vallejo used its General Fund reserves to cover shortfalls in other funds" and "[b]y the end of the 2007-2008 fiscal year, the reserves were exhausted."[28] When Vallejo reached insolvency, it "could not borrow from private credit markets because it had no reserves and insufficient cash flow to pay back loans….In the end, due to an inability to borrow, Vallejo's fiscal situation became bleak."[29]

It is also critical to understand that fiscal emergencies — justifying the suspension or temporary modification of certain contractual obligations — and bankruptcy are fundamentally different in a number of respects. First, as discussed above, a fiscal emergency turns on the level of *services* remaining, not solely on whether bankruptcy is imminent. When high-crime cities are cutting their sworn police staffing, that is a good indication that fiscal distress is

very real. After all, there is never a political incentive to cut police officers and firefighters. Yet in recent years, major California cities such as Stockton, Oakland, and San José have done just that. Moreover, when cities are faced with the prospect of closing libraries and community centers, one begins to see why the pre-bankruptcy G.M. analogy is so appropriate here.

Second, declarations of emergency are generally temporary measures — to enable a city to arrest its slide. This, in turn, provides an agency with time to develop strategies for raising revenues, to find ways to provide services more efficiently, to out-source, to bargain with employee organizations, or to simply attempt to maintain services in the hope that the economic picture will brighten. The word "temporary," of course, is necessarily elastic. In collective bargaining settings, temporary might suggest one or two fiscal years. When viewed in the context of pensions, on the other hand, it could mean five years. This is because, in view of a dramatic rise in unfunded pension liabilities, it is unlikely that any change in benefits lasting only a year or two would "move the needle."

Thus, in determining when to declare a fiscal emergency, the focus should not be whether a public agency can merely scrape by. Rather, an agency must look at whether, in the next couple of years, revenues will be sufficient to cover the expenditures necessary to provide a service level consistent with public health and safety.

(3) The public agency should demonstrate a nexus between the emergency and the actions taken. As noted above, in evaluating the legitimacy of a public employer's emergency measures, a court will look to see whether the measures were "reasonable and necessary" to serve an important public purpose. To satisfy this burden, an employer will have to show that the measures imposed were narrowly tailored to deal with the emergency at hand. As one court explained, "[A] law that works substantial impairment of contractual relations must be specifically tailored to meet the societal ill it is supposedly designed to ameliorate."[30]

What this means on a practical level is that there must be some connection between the contractual impairments and the underlying emergency. The recent efforts by the City of Stockton to address its ongoing fiscal crisis are illustrative of this principle.

The recession that began in fall 2008 has hit Stockton particularly hard. Property values have fallen by 66 percent. The city's unemployment rate has skyrocketed, and is nearly double the state's rate. Because of these events, city revenues have plummeted.

The city did the best it could to ride out the recession without taking actions that would implicate bargainable issues. Stockton cut police staffing by 25 percent — despite having one of the highest crime rates in California. It cut its general workforce by an even greater amount. The city sought tax increases. Stockton depleted its general fund reserves to the point where the reserves only covered two days of operation. It drained its Workers' Compensation fund. And, the city reached agreements with various unions to forego raises and to change some benefits.

But these efforts were not enough; Stockton still needed to address a $23 million budget deficit for fiscal year 2010-11. Faced with closed contracts with its police and fire unions, Stockton was going to have to eliminate an additional 40 police officer positions in order to close the budget deficit — an untenable and dangerous option given the city's critical public safety needs. Accordingly, the city declared a state of fiscal emergency and authorized the imposition of

limited emergency measures on members of the police and fire bargaining units that would allow the city to close its budget gap.[31] Stockton was forced to take additional measures the following year with respect to its police union contract.[32]

While Stockton's emergency measures are currently in various stages of litigation, they illustrate precisely the type of tempered approach public employers must adopt in exercising their inherent emergency powers to impair contractual obligations. Stockton did all it could to cut costs and reach negotiated resolutions with its employee organizations. When these efforts proved insufficient to solve its budgetary issues, the city implemented limited measures narrowly tailored to the emergency at hand — in particular, measures that allowed the city to balance its budget without having to lay off an additional 40 police officers in the face of high public safety needs.

(4) The agency must consider alternatives to emergency measures. Employee advocates also argue that budgetary pressures can never justify the impairment of contractual obligations because public agencies always have other, less intrusive options at their disposal, including raising taxes, renegotiating labor agreements, and consolidating or eliminating services. But the fact that a public agency has not exhausted all other cost saving measures before declaring a state of fiscal emergency should not automatically render the declaration invalid. As discussed above, some options — such as depleting reserve funds — will only exacerbate long-term financial difficulties. Other options — such as reaching agreement with unions on concessions and/or obtaining voter support for tax increases — are not available or are insufficient.

What is required, however, is that impairing contractual obligations cannot be considered as just one of several policy options. Rather, a declaration of fiscal emergency should only be used after a public agency has fully and meaningfully explored available alternatives and ultimately determined these alternatives are insufficient to solve the agency's long-term financial issues.

Significantly, courts have recognized that such policy decisions by governing legislative bodies are entitled to deference. For example, in *Baltimore Teachers Union v. Mayor and City of Baltimore*,[33] the city imposed salary reductions on police and teachers in light of a sharp decline in city revenues and the city's legal duty to pass a balanced budget. The teachers' union claimed that the salary reductions were improper because there were less intrusive measures available to the city, such as raising taxes. The court rejected this argument, stating: "It is not enough to reason…that '[t]he City could have shifted the burden from another governmental program,' or that 'it could have raised taxes.' Were these the proper criteria, no impairment of a governmental contract could ever survive constitutional scrutiny, for these courses are always open, no matter how unwise they may be."[34] The court stated that although "[t]he authority of the states to impair contracts, to be sure, must be constrained in some meaningful way," the Contract Clause "does not require the courts — even where public contracts have been impaired — to sit as superlegislatures."[35]

The court in *Buffalo Teachers Federation v. Tobe* reached a similar conclusion. In that case, the court stated: "[i]t cannot be the case…that a legislature's only response to a fiscal emergency is to raise taxes" and that "it is reasonable to believe that any additional increase would have exacerbated Buffalo's financial condition."[36] The court expressed deference for the city's decision to impose a wage freeze in response to its fiscal emergency,

"find[ing] no need to second guess the wisdom of picking the wage freeze over other policy alternatives, especially those that appear more draconian, such as further layoffs or elimination of essential services."[37]

The court presiding over the Vallejo bankruptcy proceedings likewise rejected the unions' argument that Vallejo could have avoided bankruptcy for another year if it had made "many minor changes," including deferral of salary increases promised in the parties' collective bargaining agreement.[38] With respect to the unions' proposed deferral of salary increases, the court noted that "to the extent the Unions' offer would keep Vallejo out of bankruptcy, the offer would not provide long term solvency beyond the first year."[39] With respect to the unions' suggestion that municipal services could be cut further, the court found that the city "had reduced expenditures to the point that municipal services were underfunded" and, more importantly, that "further funding reductions would threaten Vallejo's ability to provide for the basic health and safety of citizens."[40]

As the foregoing demonstrates, a public agency need not exhaust *all* cost-saving measures prior to impairing its own contractual obligations, particularly where those alternatives will not solve the underlying problem. What is required, however, is that a public agency fully considers and makes appropriate legislative findings regarding why those alternatives are insufficient, prior to impairing any contractual obligations.

The recent federal district court decision in *Donohue v. Paterson*[41] highlights the importance of this requirement. In *Donohue,* the governor of New York submitted, and the state legislature passed, an emergency appropriations bill that enacted unpaid furloughs, a wage freeze, and a benefits freeze on a number of state employees in contravention of their union-negotiated labor agreements, in order to address the state's ongoing fiscal crisis. The unions promptly filed suit and sought a temporary restraining order (TRO) preventing the emergency measures from going into effect. In evaluating the unions' TRO request, the court did not question whether the state's "fiscal crisis" constituted a legitimate public purpose warranting the impairment of its contractual obligations. However, the court found that the state had failed to show that it properly considered alternatives to the emergency measures imposed. In particular, the court stated, "Defendants do not, and evidently cannot, direct the Court to any legislative consideration of policy alternatives to the challenged terms in the bill; rather, the only support offered by Defendants for their assertion that the contractual impairment was not considered on par with other alternatives is a list of asserted expenditures decisions made by the State over the past years, such as a hiring freeze and delays of school aid….This will not do."[42] In particular, the court pointed to "the conspicuous absence of a record showing that options were actually considered and compared…."[43]

Conclusion

Emergencies should not be lightly invoked. To the extent they are invoked as a legal basis for temporarily impairing contracts, they pose a risk. If subsequent negotiations and actions do not solve the problem, a public agency is in danger of spending money to preserve services and then later having to pay the money it thought it saved to employees or retirees if it loses in a court action. But handled properly, a declaration of fiscal emergency can be a final opportunity to correct course if the evidence suggests the current course will decimate services.

No one likes to hear that promises cannot be fulfilled. But promises to employees and retirees are not the only promises a government makes; it also makes promises to the residents — promises that induce them to come to a

particular city or county. The failure to live up to the latter promises has had a devastating effect on the public's view of government and contributes significantly to the death spiral in which we find ourselves. For those who work for or with public agencies, it is a broken promise we ignore at our peril.

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[1] *See John Knox and Marc Levinson, "Municipal Bankruptcy: Avoiding and Using Chapter 9 in Times of Fiscal Distress," pp. 11-12, available at http://www.orrick.com/fileupload/1736.pdf.*

2] *See Christopher E. Platten, "Declarations of Fiscal Emergency: A ' Dead on Arrival' Means of Limiting Public Pension Costs and Impairing Local Agency MOUs," CPER No. 203*

[3] *Manigualt v. Springs (1905) 199 U.S. 473, 480; see also U.S. Trust Co. of New York v. New Jersey (1977) 4 U.S. 1, 22.*

[4] *(1934) 290 U.S. 398.*

[5] *Id. at 439.*

[6] *Hudson County v. Water Co. v. McCarter (1908) 209 U.S. 349, 357; Sonoma County Organization of Public Employees v. County of Sonoma (1979) 23 Cal.3d 296, 305 ("The state's police power remains paramount, for a legislative body 'cannot bargain away the public health or the public morals").*

[7] *Baltimore Teachers Union v. Mayor and Council of Baltimore (4th Cir. 1993) 6 F.3d 1012, 1021.*

[8] *(1979) 23 Cal. 3d 296.*

[9] *Id. at 305-06.*

[10] *See Veix v. Sixth Ward Bldg. and Loan Assn. (1940) 310 U.S. 32, 39-40 (recognizing that an emergency need not be declared and relief measures need not be temporary for an impairment to be deemed constitutional).*

[11] *(1977) 431 U.S. 1, 23 n. 19.*

[12] *Id. at 25.*

[13] *(1997) 52 Cal. App. 4th 1109.*

[14] *Id. at 1161.*

[15] *Id. at 1118.*

[16] *210 Cal. App. 3d 1095.*

[17] *Id. at 1112.*

[18] *Id. at 1115.*

[19] *Id. at 1113.*

[20] *See Daniel Hancock, Chair of the Little Hoover Commission, "Pension Changes Can't Wait," Op-Ed article in Sacramento Bee, Aug. 28, 2011, available at: http://www.sacbee.com/2011/08/28/3864677/pension-changes-cant-wait.html.*

[21] *See, e.g., Ronald K. Snell, "Pension and Retirement Plan Enactments in 2011 State Legislatures," National Conference of State Legislatures website, available at: http://www.ncsl.org/?tabid=22763*

[22] See *Sonoma County Organization etc. Employees v. County of Sonoma* (1991) 1 Cal. App. 4th 267, 276.

[23] *(1978) 44 N.Y.2d 101.*

[24] *Id. at 101. It is important to note that the California Supreme Court in Sonoma County Organization of Public Employees v. County of Sonoma, supra, "seriously question[ed]" the Subway Surface court's rationale in regards to its finding that "employees had not rendered consideration for the second year of the contract when the freeze was imposed." 23 Cal. 3d at 313. It is also important to point out that before Subway-Surface Supervisors reached New York's highest court in the opinion cited, a lower court had invalidated the portion of the city's measure "barring the calculation of pension benefits on wages increases" promised in the parties' labor agreement based on a provision in the New York Constitution, which expressly states: "membership in any pension or retirement system of the state or of a civil division thereof shall be contractual relationships, the benefits of which shall not be impaired." See Subway-Surface Supervisors v. N.Y.C. Transit Authority (1977) 392 N.Y.S.2d 460, 466-67. The high court expressly declined to rule on the propriety of the city's pension changes because an agreement had been reached between the parties on this issue. 44 N.Y.2d at 109.*

[25] *(2d Cir. 2006) 464 F.3d 362.*

[26] *Id. at 373.*

[27] *In October 2011, Governor Brown signed Assembly Bill 506, which requires that before a local agency can declare bankruptcy, it must participate in a "specified neutral evaluation process with interested parties" or declare fiscal emergency upon a finding that "the financial state of the local public entity jeopardizes the health, safety, or well-being of the residents of the local public entity's jurisdiction or service area absent protections of Chapter 9" of the bankruptcy code.*

[28] *In re City of Vallejo (B.A.P. 9th Cir. 2009) 408 B.R. 280, 286.*

[29] *Ibid.*

[30] *Sanitation and Recycling Indust., Inc. v. City of New York (2d Cir. 1997) 107 F.3d 985, 993.*

[31] *See http://stockton.granicus.com/MetaViewer.php?view_id=48&clip_id=2937&meta_id=261498.*

[32] *See http://stockton.granicus.com/MetaViewer.php?view_id=48&clip_id=3612&meta_id=309952. Because its fire contract had expired, it was not required to use emergency powers with respect to firefighters, and was able to reach a negotiated resolution.*

[33] *(4th Cir. 1993) 6 F.3d 1012.*

[34] *Id. at 1019-20.*

[35] *Id. at 1021-22.*

[36] *464 F.3d at 372.*

[37] *Ibid.*

[38] *In re Vallejo, supra, 408 B.R. at 293-94.*

[39] *Id. at 294.*

[40] *Ibid.*

[41] *(N.D.N.Y. 2010)715 F. Supp. 2d 306.*

[42] *Id. at 322.*

[43] *Id. at 323.*