No. 21-_____

In the Supreme Court of the United States

STATE HEALTH PLAN FOR TEACHERS AND STATE EMPLOYEES, et al.,
Petitioners,

v.

I. BEVERLY LAKE, et al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

When a state legislature expressly reserves the right to amend a statute providing benefits to government employees, does that reservation bar a claim under the Contracts Clause based on the legislature's later decision to amend those benefits?

PARTIES TO THE PROCEEDING

Petitioners are the State Health Plan for Teachers and State Employees; the Teachers' and State Employees' Retirement System of North Carolina; the Board of Trustees of the Teachers' and the State Employees' Retirement System of North Carolina; Dale R. Folwell, in his official capacity as Treasurer of North Carolina; and the State of North Carolina.

Respondents are I. Beverly Lake; John B. Lewis, Jr.; Everette M. Latta; Porter L. McAteer; Elizabeth S. McAteer; Robert C. Hanes; Blair J. Carpenter; Marilyn L. Futrelle; Franklin E. Davis; the Estate of James D. Wilson; the Estate of Benjamin E. Fountain, Jr.; Faye Iris Y. Fisher; Steve Fred Blanton; Herbert W. Cooper; Robert C. Hayes, Jr.; Stephen B. Jones; Marcellus Buchanan; David B. Barnes; Barbara J. Currie; Connie Savell; Robert B. Kaiser; Joan Atwell; Alice P. Nobles; Bruce B. Jarvis; Roxanna J. Evans; Jean C. Narron; and a certified class of more than 220,000 retired state employees or their estates.

RELATED CASES

- *Lake v. State Health Plan for Teachers and State Employees*, No. 12 CVS 1547, Superior Court of Gaston County, North Carolina. Order entered May 17, 2017.
- *Lake v. State Health Plan for Teachers and State Employees*, North Carolina Court of Appeals. Judgment entered March 5, 2019.
- *Lake v. State Health Plan for Teachers and State Employees*, Supreme Court of North Carolina. Judgment entered March 11, 2022.

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INTRODUCTION

In a series of cases tracing back to Justice Story's foundational opinion in the *Dartmouth College* case, this Court has repeatedly held that legislatures can prevent a statute from giving rise to constitutionally protected contract rights by expressly reserving the right to amend that statute. For example, this Court held in *Flemming v. Nestor* that Congress's inclusion of a clause in the Social Security Act "expressly reserving to it '(t)he right to alter, amend, or repeal'" the Act made clear that Social Security benefits are "noncontractual." 363 U.S. 603, 611 (1960) (quoting 42 U.S.C. § 1304).

Based on these precedents, the North Carolina General Assembly similarly reserved the right to "alter, amend, or repeal" a statute providing health benefits to retired state employees. Relying on this reservation of rights, the legislature later amended the statute to attach a modest monthly premium to certain health plans.

In the decision below, however, the North Carolina Supreme Court held that the legislature's reservation of rights was ineffective, because retired state employees had a "reasonable[ ] . . . belief" that the statute's benefits would not be altered. That is, the court below disregarded the right-to-amend provision based solely on extrinsic evidence indicating that state employees *expected* to have access to premium-free health benefits for the rest of their lives. These expectations, the court held, created contract rights protected by the Contracts Clause.

In choosing to import promissory estoppel principles into the Contracts Clause to overcome a statutory right-to-amend provision, the North Carolina Supreme Court joined its counterpart in Minnesota and aligned with writings by the First Circuit. But it departed from decisions by five federal courts of appeals and five state high courts—all of which hold that a statutory right-to-amend provision serves as a categorical bar to Contracts Clause claims.

This Court should review this entrenched and deepening split. For nearly two hundred years, this Court's precedents provided legislatures with stable and predictable guidance on how to craft statutory benefit programs without contractually fixing those benefits in stone. This certainty allowed state legislatures to provide statutory benefits without fear that they would lose the flexibility to adjust those benefits when circumstances required.

The minority position embraced by the decision below disrupts that settled understanding. This disruption has considerable negative consequences. It threatens States with crippling and unexpected liability when they respond to new developments—like rising healthcare costs—by exercising their inherent power to amend statutory benefits. It also invites endless litigation over the legality of benefit reforms. Such litigation can result in judicial micromanagement of complex benefit programs, removing quintessential policy decisions from the political branches where they belong.

The decision below also places state and local governments at a unique disadvantage. This Court's

precedents have made clear that both the federal government and private employers can rely on provisions similar to North Carolina's to preserve their flexibility to amend benefits in response to changed circumstances. Thus, state and local governments alone lack definitive guidance from this Court on how to prevent statutory benefits from being construed as contractual rights.

In sum, this Court's review is warranted to resolve a square split of authority on an important and recurring question of federal constitutional law.

OPINIONS BELOW

The North Carolina Supreme Court's decision is reported at 869 S.E.2d 292. App. 1a. The decision of the North Carolina Court of Appeals is reported at 825 S.E.2d 645. App. 60a. The decision of the Superior Court of Gaston County, North Carolina is not reported. App. 85a.

JURISDICTION

Under 28 U.S.C. § 1257(a), Petitioners respectfully seek a writ of certiorari to review a judgment of the North Carolina Supreme Court. The court issued its opinion on March 11, 2022.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Contracts Clause, U.S. Const. art. I, § 10, cl. 1, provides: "No State shall . . . pass any . . . Law impairing the Obligation of Contracts."

Section 135-48.2(a) of the North Carolina General Statutes states in relevant part: "The State of North Carolina undertakes to make available a State Health Plan . . . exclusively for the benefit of eligible employees, eligible retired employees, and certain of their eligible dependents, which will pay benefits in accordance with the terms of this Article."

Section 135-48.3 of the North Carolina General Statutes states: "The General Assembly reserves the right to alter, amend, or repeal this Article."

STATEMENT OF THE CASE

Since 1982, the North Carolina General Assembly has "undertake[n]" to make healthcare benefits available to retired state employees. N.C. Gen. Stat. § 135-48.2(a).

The same statute that authorizes these benefits expressly reserves the legislature's right to amend them. Benefits may only be paid "in accordance with the terms of th[e] [statute]." *Id.* And the "General Assembly reserves the right to alter, amend, or repeal" the statute at any time. *Id.* § 135-48.3.

Pursuant to that reserved power, the General Assembly has amended the benefit statute nearly every year since it was enacted, sometimes expanding benefits, and sometimes reducing them. App. 79a-80a. Many of these changes were significant. For example, the legislature has repeatedly increased the coinsurance rate on premium-free benefits—that is, the percentage of medical costs an insured individual is responsible for paying. App. 79a-80a. It increased

the rate from 5% to 10% in 1985, to 20% in 1991, and to 30% in 2011. App. 57a, 63a, 80a.

Today, the State offers retired state employees a variety of different health plans. App. 8a. At least one plan has always been premium-free. App. 6a-8a. At issue in this case is a plan called the "80/20 PPO" plan. Retirees that choose to participate in this "preferred provider organization" plan generally pay a 20% coinsurance rate for in-network medical services. App. 2a-3a.

Initially, the plan did not charge a premium for individual coverage. App. 6a. In 2011, however, the General Assembly authorized a modest monthly premium. *See* Act of May 11, 2011, S.L. 2011-85, § 1.2(a), 2011 N.C. Sess. Laws 119, 120 (authorizing monthly premiums ranging from $10 to $23). Even as this change went into effect, the State continued to offer a premium-free "70/30 PPO" plan for retirees. App. 8a.

A group of retired state employees and teachers, Respondents here, filed this lawsuit. They claimed that the premium attached to the 80/20 PPO plan impaired a contract between them and the State, violating the U.S. Constitution's Contracts Clause and the North Carolina Constitution's protection against takings without just compensation.

The trial court certified the case as a class action. The class includes nearly all retired state employees who were eligible to enroll in the plan as of September 1, 2016—more than 220,000 retirees or their estates. App. 2a, 87a-88a.

Both sides eventually moved for summary judgment. The trial court granted Respondents' motion and denied the State's motion. App. 96a. Applying the three-part test set forth by this Court in *U.S. Trust Co. v. New Jersey*, 431 U.S. 1 (1977), the trial court found that the State violated the Contracts Clause because it (1) contracted with the class members to provide them with premium-free health benefits, at a fixed level, for the rest of their lives; (2) substantially impaired that contract by charging a premium on the 80/20 PPO plan, even though the 70/30 PPO plan remained premium-free; and (3) did so without a legitimate public purpose. App. 89a-93a. The court then entered a permanent injunction requiring the State to provide class members with the 80/20 PPO plan (or its equivalent) premium-free, "for the duration of their retirements." App. 96a-97a.

The State appealed. In a unanimous opinion, the state court of appeals reversed and remanded for entry of judgment in the State's favor. App. 83a-84a.

Respondents' Contracts Clause claim, the court of appeals held, failed at the outset, because the State never offered them a lifetime contract for health benefits. App. 68a-81a. As the court explained, there is a strong presumption that statutes are not meant to create contract rights. App. 69a (citing, *inter alia*, *Nat'l R.R. Passenger Corp. v. Atchison, Topeka & Santa Fe Ry. Co.*, 470 U.S. 451, 466 (1985); *Dodge v. Bd. of Educ.*, 302 U.S. 74, 79 (1937)). The statute at issue here never describes health benefits in contractual terms. App. 76a-78a. And the statute's right-to-amend clause dispels any doubt about

whether the legislature intended to make statutory benefits contractual. App. 78a-79a (citing *National Railroad*, 470 U.S. at 467).

The North Carolina Supreme Court reversed in a 4-2 decision. App. 50a. As a foundational matter, the court acknowledged that the correct "legal framework applicable to claims arising under the Contracts Clause" is the "three-part test set forth in *U.S. Trust*." App. 18a. But its analysis parted ways with the state court of appeals at the first step—"ascertain[ing] . . . whether a contractual obligation is present." App. 18a.

The court agreed with the State that the statute authorizing the creation of the health plan "is not itself the source" of any contract rights. App. 31a-32a. Nevertheless, the court held that rights protected by the Contracts Clause "can arise even in the absence of a statute demonstrating the General Assembly's express intent to undertake a contractual obligation." App. 32a-33a. All that is required, the court believed, is for a statute's beneficiaries to hold a "reasonable[ ] . . . belief" that statutory benefits are contractual. App. 35a-36a. In support, the court cited *Bailey v. State*, 500 S.E.2d 54, 62 (N.C. 1998), and other North Carolina cases for the proposition that reliance interests can serve as the "source" of rights "safeguarded by the Contract Clause['s] protection." App. 25a. The court found such reliance interests here: In its view, the evidence showed that the retirees "reasonably relied upon the promise" of health benefits that were set out in the benefit statute. App. 32a-34a. And this reasonable reliance was enough to

bar the state legislature from materially reducing those benefits under the Contracts Clause. App. 49a-50a.

The court acknowledged that the right-to-amend provision served as powerful evidence that the General Assembly did not actually intend the statute to be a contract. App. 31a-32a. And the court further suggested that, had the clause made this non-contracting intent "unmistakably" clear, it might have prevented contract rights from forming. App. 33a n.7. Nonetheless, the court concluded that even "a statutory provision containing a right-to-amend clause could give rise to contractual benefits." App. 21a n.5.

The court also briefly addressed the retirees' takings claim under the North Carolina Constitution. App. 47a-49a. In the court's view, its holding that the retirees had a "vested right in retirement health insurance coverage" for purposes of the Contracts Clause "necessarily" meant that the takings claim was "colorable." App. 48a. Thus, the court's resolution of Respondents' claim under the North Carolina Constitution depended solely on its resolution of their federal Contracts Clause claim.[1]

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[1] Moreover, as federal courts have recognized, "North Carolina uses the same standard for determining whether a taking has occurred under both the U.S. and North Carolina Constitutions." *Zito v. N.C. Coastal Res. Comm'n*, 8 F.4th 281, 289 n.7 (4th Cir. 2021) (citing *Finch v. City of Durham*, 384 S.E.2d 8, 19 (N.C. 1989)).

North Carolina's Constitution does not have a contracts clause.

REASONS FOR GRANTING THE PETITION

I. Review Is Warranted to Resolve a Split of Authority on the Question Presented.

This Court's review is needed to resolve a longstanding conflict of authority that is exacerbated by the decision below. The North Carolina Supreme Court held that a Contracts Clause claim may proceed despite the existence of a statutory right-to-amend clause. App. 21a n.5, 32a-34a. This ruling aligns with a decision of the Minnesota Supreme Court. Its logic is also consistent with writings by the First Circuit. But it squarely conflicts with decisions by five federal courts of appeals and five state supreme courts.

A. The ruling below aligns with the views of two other jurisdictions.

Consistent with the decision below, the Minnesota Supreme Court has held that express statutory disclaimers of contract rights—even those that go beyond reserving a right to amend and "purport to deny the creation of any contract right at any time"—do not preclude Contracts Clause claims. *See Christensen v. Minneapolis Mun. Emps. Ret. Bd.*, 331 N.W.2d 740, 748 (Minn. 1983).

In *Christensen*, the court applied this Court's "three-part test to determine when a contractual impairment is unconstitutional." *Id.* at 750-51. At the same time, however, the court rejected a "conventional contract approach" to analyzing whether statutes providing public-employee benefits create "protectable entitlement[s]" under the Contracts Clause. *Id.* at 747-48. In the court's view, a

Contracts Clause claim may proceed on a theory of "promissory estoppel," which asks whether there has "been reasonable reliance on the part of the employee." *Id.* at 749. When there has been such reliance, state employees can bring Contracts Clause claims when statutory benefits are altered, even if the relevant statutes say unequivocally that the government "has not promised its employees [a benefit] as a matter of contract right." *Id.*

The First Circuit also employs an approach that is similar to the decision below. In its decisions, the First Circuit recites this Court's requirement that statutory contracts are formed only when the legislature's contracting intent is "unmistakable." *Me. Ass'n of Retirees v. Bd. of Tr. of the Me. Pub. Emps. Ret. Sys.*, 758 F.3d 23, 27 (1st Cir. 2014); *see also Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 148 (1982) (requiring legislative intent to create contract rights to be stated in "unmistakable terms"). Under that rubric, the First Circuit has held that a right-to-amend clause will "*generally* demonstrate" an intent not to create a contract. *Maine Association of Retirees*, 758 F.3d at 30 (emphasis added).

However, the First Circuit has also stated that, in its view, the analysis of contracting intent "cannot end with the bare language of the statute, since a clear and unequivocal intent to contract can also be demonstrated by circumstances." *Id.* (quoting *Parella v. Ret. Bd. of R.I. Emps.' Ret. Sys.*, 173 F.3d 46, 61 (1st Cir. 1999)). "Such circumstances," the court has said, "will vary from case to case." *Parella*, 173 F.3d at 61. But given "the general trend toward recognizing

retirement benefits as contractual," the court has expressed that unequivocal contracting intent can be shown merely because a state has offered benefits to longstanding "employees of the state." *Id.* In this way, the First Circuit has indicated that, like the decision below, it is possible for a statute with an explicit right-to-amend clause to give rise to liability under the Contracts Clause. *See id.*

B. The ruling below conflicts with numerous decisions by federal and state appellate courts.

In contrast, more than ten federal and state appellate courts follow the rule that a right-to-amend clause forecloses Contracts Clause claims.

To begin, the Sixth Circuit has held that an applicable right-to-amend provision nips a Contracts Clause claim in the bud by preventing contract formation. *Frazier v. City of Chattanooga*, 841 F.3d 433, 436-37 (6th Cir. 2016). In that case, the City of Chattanooga decreased the annual cost-of-living adjustment for one of its pension plans. *Id.* at 435. A group of retirees sued, arguing that they were entitled to the previous, higher adjustment. *Id.* But the city code expressly reserved the City's right to "freely amend" plan components like the adjustment. *Id.* at 436. That "unambiguous Code language," the court held, prevented any "contractual right" in a specific adjustment from forming. *Id.* at 439.

The Third Circuit has taken the same approach. In *Transport Workers Union of America v. Southeastern Pennsylvania Transportation Authority*, a public employer amended a benefit plan to require, for the

first time, covered employees to contribute earnings to the plan. 145 F.3d 619, 621 (3rd Cir. 1998). The employees' union sued, arguing that the new requirement violated the Contracts Clause. *Id.* However, the statute authorizing the plan expressly stated that it might be "modified from time to time." *Id.* at 622. Given that clear reservation, the court concluded that the employees "had no reasonable expectation" of contribution-free benefits and, accordingly, no viable claim. *Id.* at 624. It would have been "inconsistent with traditional principles of contract law" to hold otherwise. *Id.*

Likewise, the Eleventh Circuit held in *Taylor v. City of Gadsden* that a right-to-amend clause barred certain public employees from challenging an increase in their pension-contribution rate. 767 F.3d 1124, 1134-36 (11th Cir. 2014). At the time the employees elected to join the pension fund, the fund's handbook "explicitly stated" that the rate was "determined by statute and subject to change by the Alabama Legislature." *Id.* at 1134. This language, coupled with actual, frequent amendments to the contribution rate, foreclosed the possibility of even an "implied promise" not to raise the rate. *Id.* at 1134-35.

In a similar vein, the Fourth and Eighth Circuits have held that there is no substantial impairment (and therefore no Contracts Clause violation) where a contract grants rights only "as may be allowed by law or promulgated regulation." *Hawkeye Commodity Promotions, Inc., v. Vilsack*, 486 F.3d 430, 436-37 (8th Cir. 2007) (emphasis removed); *see City of Charleston*

v. Pub. Serv. Comm'n of W. Va., 57 F.3d 385, 391-92 (4th Cir. 1995).

Several state courts are in accord. The Supreme Court of Alabama has said that "where employees have served and retired, the benefits to which they are entitled may not be reduced subsequent to their retirement *absent* an express reservation of a right to amend at any time." *Bd. of Trs. of the Policemen's & Firemen's Ret. Fund v. Cary*, 373 So. 2d 841, 842 (Ala. 1979) (per curiam) (emphasis added).[2]

The high courts of three other states—Wisconsin, Massachusetts, and Washington—have also held that a statutory right-to-amend provision precludes a Contracts Clause claim, albeit for a different reason. *Wis. Pro. Police Ass'n, Inc. v. Lightbourn*, 627 N.W.2d 807, 856 (Wis. 2001); *Nat'l Ass'n of Gov't Emps. v. Commonwealth*, 646 N.E.2d 106, 110-11 (Mass. 1995); *see Wash. Educ. Ass'n v. Wash. Dep't of Ret. Sys.*, 332 P.3d 439, 444 (Wash. 2014).[3] Even assuming a statute forms a contract for a specific benefit, these courts hold that a right-to-amend clause is "just as much a part of [that] contract as any other provision."

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[2] The claim before court in *Cary* was brought under the Alabama Constitution's contracts clause, which prohibits "any law . . . impairing the obligations of contracts." Ala. Const. art. I, § 22. Like many States, however, the Alabama Supreme Court has construed its state constitution's contracts clause in lockstep with its federal counterpart. *See Taylor*, 767 F.3d at 1131 & n.32 (collecting cases).

[3] The claim before the court in *Washington Educators* also arose under the Washington Constitution's contracts clause, but the court emphasized that "the state and federal contracts clauses" are coextensive and "are given the same effect." 332 P.3d at 443.

Lightbourn, 627 N.W.2d at 856. It follows, then, that when a legislature acts on its reserved power to amend, it acts in conformity with the contract and does not impair it. *Id.*; *Washington Educators*, 332 P.3d at 444; *see also National Association*, 646 N.E.2d at 110-11 (holding that a statutory right-to-amend clause "supersedes" express terms in collective bargaining agreements).

The Michigan Supreme Court has gone a step further, reasoning that unless a statute's plain language includes a "covenant *not* to amend" benefits, then there is almost certainly no contract. *Studier v. Mich. Pub. Sch. Emps. Ret. Bd.*, 698 N.W.2d 350, 362-63 (Mich. 2005) (emphasis added). The court cited this Court's decision in *National Railroad* as the basis for its "cautious" rule. *Id.* at 361-62 (discussing 470 U.S. at 465-66).

In short, there is a clear conflict of authority on whether a statutory right-to-amend clause forecloses a Contracts Clause claim. As the above-cited cases show, this issue arises frequently in both state and federal courts across the country. Absent this Court's guidance, the issue will likely continue to recur in future cases, given the need for governments to reform benefits in response to changed circumstances. In the past, this Court has not hesitated to grant review "to resolve a split of authority over whether the Contracts Clause" applies to a particular set of facts. *Sveen v. Melin*, 138 S. Ct. 1815, 1821 & n.2 (2018) (noting that the decision below had created a 2-3 circuit split). It should do the same here.

This split in authority is particularly troublesome, moreover, because state and federal courts with overlapping jurisdiction have ruled differently on the same question of law. For example, the Eighth and Fourth Circuits have held that a right-to-amend clause bars Contracts Clause claims, whereas the Minnesota and North Carolina Supreme Courts have reached the opposite conclusion. This divergence has not gone unnoticed. As one Fourth Circuit judge has observed, the North Carolina Supreme Court's prior jurisprudence in this area has applied the Contracts Clause "in ways that vary significantly from the approach of federal courts." *Crosby v. City of Gastonia*, 635 F.3d 634, 645 (4th Cir. 2011) (Davis, J., concurring). Thus, the outcome of cases like this one will often turn entirely on whether a plaintiff files her Contracts Clause claim in state or federal court. Only this Court's review can bring clarity to this tangle of conflicting authority.

C. Right-to-amend clauses receive consistent treatment in other contexts.

Changes to retirement benefit plans are commonly challenged under the Takings Clause and ERISA as well. When they are, the courts of appeals have generally held that right-to-amend clauses prevent the creation of constitutionally or statutorily protected contract rights.

For example, where claims like the ones here are filed against the federal government, they are typically brought under the Takings Clause, as the Contracts Clause applies only to States. *See* U.S. Const. art. I, § 10, cl. 1. In these cases, several circuits

have held that a statutory right-to-amend provision "forecloses a finding that [beneficiaries] have obtained unalterable vested property rights" protected by the Takings Clause. *See, e.g.*, *S.C. State Educ. Assistance Auth. v. Cavazos*, 897 F.2d 1272, 1276-77 (4th Cir. 1990); *Educ. Assistance Corp. v. Cavazos*, 902 F.2d 617, 628 (8th Cir. 1990).

As in the Contracts Clause context, these courts have recognized that a reservation of power to "alter a government created right in response to changing conditions" clearly demonstrates a government's "unwillingness" to create vested property rights. *Democratic Cent. Comm. of D.C. v. Wash. Metro. Area Transit Comm'n*, 38 F.3d 603, 606-07 (D.C. Cir. 1994).

Likewise, when cases like these are filed against private employers, they are usually brought under the Employee Retirement Income Security Act of 1974 ("ERISA"), 88 Stat. 829, as amended, 29 U.S.C. §§ 1001-1461. The case law in this context mirrors the Contracts Clause split.

Under ERISA, employers are generally free to modify or terminate non-pension benefits absent an unambiguous promise to the contrary. *See id.* § 1051; *Abbruscato v. Empire Blue Cross & Blue Shield*, 274 F.3d 90, 98 (2d Cir. 2001). This Court has repeatedly emphasized that employer-employee agreements must be construed "according to ordinary principles of contract law." *CNH Indus. N.V. v. Reese*, 138 S. Ct. 761, 763 (2018) (quoting *M&G Polymers USA, LLC v. Tackett*, 574 U.S. 427, 435 (2015)). And in line with that admonition, most courts have held that the presence of a right-to-amend clause prevents vesting.

See, e.g., *Abbruscato*, 274 F.3d at 99 (language of reservation "clearly inform[s] employees that . . . benefits [are] subject to modification"); *Gable v. Sweetheart Cup Co.*, 35 F.3d 851, 856 (4th Cir. 1994) (the "express reservation of the company's right to modify or terminate the participants' [retiree health] benefits is plainly inconsistent with any alleged intent" to guarantee those benefits).

However, the Eighth Circuit has taken the position that even a facially "unambiguous reservation-of-rights" in a retirement plan may be "overcome" by some "affirmative indication of vesting [elsewhere] in the plan documents." *Stearns v. NCR Corp.*, 297 F.3d 706, 712 (8th Cir. 2002). Thus, as with the Contracts Clause, most courts have held that a right-to-amend provision will foreclose certain ERISA claims, but others have held that such reservations can be overcome by other evidence of contracting intent.

II. Review Is Warranted Because the Decision Below Misapplied This Court's Precedents.

Review of the decision below is also warranted because it misapplied the precedents of this Court on an important question of federal law. S. Ct. R. 10(c); *see Gen. Motors Corp. v. Romein*, 503 U.S. 181, 187 (1992) (The issue of "whether a contract was made is a federal question for purposes of Contract Clause analysis.").

In the decision below, the court declined to apply this Court's longstanding precedent that a legislature's express reservation of its right to amend

a statute precludes claims under the Contracts Clause.

This principle finds its origins in this Court's foundational Contracts Clause case, *Trustees of Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518 (1819). In that case, the Court held that King George III's colonial-era corporate charter establishing Dartmouth College constituted a contract. *Id.* at 658-59. The Court further held that New Hampshire's attempt to convert the college into a public institution, contrary to the charter's terms, violated the Contracts Clause. *Id.* at 664.

Importantly, however, Justice Story authored a concurring opinion in *Dartmouth College* that cabined the Court's holding. In that opinion, Justice Story explained that New Hampshire was barred from overriding Dartmouth's charter only because "no power" had been "reserved" to the government "to alter, amend or control the charter." *Id.* at 680. Thus, Justice Story made it clear that States *could* amend future charters, so long as that power was "reserved to the legislature in the act of incorporation." *Id.* at 708; *see also id.* at 712.

State legislatures quickly embraced Justice Story's understanding of the scope of this Court's ruling. As this Court later explained, "many a State in the Union" reacted to the ruling in *Dartmouth College* by including right-to-amend clauses in statutes to prevent state action from forming contracts. *Looker v. Maynard*, 179 U.S. 46, 52 (1900). Since that time, this Court has repeatedly upheld these reservations. For example, in *Miller v. New York*, another corporate

charter case, the Court observed that "the power to alter, modify, or repeal an act of incorporation, is frequently reserved to the State by a general law applicable to all acts of incorporation." 82 U.S. 478, 488 (1872). When States make such a reservation, it is "clear" that the reserved "power may be exercised whenever it appears that the act of incorporation is one which falls within the reservation." *Id.* at 489 (relying on Justice Story's reasoning); *see also In re Pa. Coll. Cases*, 80 U.S. 190, 212-14 (1871) (applying this rule even absent an express reservation of rights, where the reservation was clear "by necessary implication").

In more recent times as well, including in cases involving statutes that create government benefits, this Court has continued to rely on these principles to reject constitutional claims based on alleged contractual rights. For example, in *Flemming v. Nestor*, the Court held that Congress's decision to include "a clause expressly reserving to it '(t)he right to alter, amend, or repeal'" the Social Security Act made "express what is implicit" in that program's design: namely, that Social Security benefits are "noncontractual" in nature. 363 U.S. at 611 (rejecting takings claim). Similarly, in *National Railroad*, the Court held that an identical right-to-amend clause prevented the formation of a statutory contract between the federal government and private railroads that had transferred their passenger rail operations to Amtrak. 470 U.S. at 465-70 (due process claim). The Court stressed that a reservation of Congress's power to amend or repeal a statute is "hardly the language

of contract." *Id.* at 467; *see also Hisquierdo v. Hisquierdo*, 439 U.S. 572, 575 & n.6 (1979) (similarly holding that retirement benefits in the railroad industry, provided under the Railroad Retirement Act, are not contractual).

This Court again reaffirmed these principles in *Bowen v. Public Agencies Opposed to Social Security Entrapment*, 477 U.S. 41 (1986). In that case, California claimed that Congress's decision to repeal a provision of the Social Security Act had impaired one of its contracts, and thereby effected a taking. *Id.* at 43-48. The provision had let States withdraw from agreements with the federal government under which they had enrolled their employees in Social Security. *Id.* The provision's repeal, California argued, impaired the contract under which it had enrolled its employees in the program, which had "included a clause that permitted [it] to terminate" the agreement. *Id.* at 48.

This Court disagreed. In doing so, it again pointed to the provision in the Social Security Act that reserved Congress's right "to alter, amend, or repeal any [of the Act's] provision[s]." *Id.* at 52 (citing 42 U.S.C. § 1304). Given this right-to-amend clause, the Act itself "created no contractual rights." *Id.*

The Court further held that the right-to-amend clause also prevented California from showing that it had a property right to terminate its actual contract with the federal government. That was so because California had "accepted the Agreement under an Act that contained the language of reservation." *Id.* at 54. This holding—that California's contract incorporated

the Act's reservation—did not break new ground. Long before *Bowen*, this Court had held that "contracting parties adopt the terms of their bargain in reliance on the law in effect at the time the agreement is reached." *U.S. Trust*, 431 U.S. at 19 n.17; *see also Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 429-30 (1934) ("laws which subsist at the time and place of the making of a contract . . . enter into and form a part of it, as if they were expressly referred to or incorporated in its terms").

Below, consistent with this Court's precedents, the North Carolina Supreme Court correctly held that the state statute creating health benefits for retired state employees did not itself form a contract, because the statute did not indicate any "intent to create a contractual obligation." App. 31a-32a. However, the court then went on to misapply this Court's precedents concerning contracts with a sovereign.

Specifically, the court below held that the state legislature's right-to-amend clause was ineffective because it had not "unambiguously" disclaimed "any intent to provide any benefits that could be incorporated into the terms of a contract." App. 33a-35a. For that reason, the court held that state employees' "reasonable[ ] . . . belief" that their benefits were guaranteed could give rise to liability under the Contracts Clause. App. 36a.

The court below reached this conclusion even though this Court has repeatedly held that *identical* right-to-amend clauses put parties on notice that the government "retained the power to amend" a statute, thus foreclosing the creation of contract rights.

Bowen, 477 U.S. at 54; *see also Flemming*, 363 U.S. at 611. Importantly, in *Bowen*, this Court also held that such a clause put parties on notice that the government had retained the power "to alter" any *related agreements*—such as non-statutory contracts between the government and state employees. 477 U.S. at 52.

The court below further suggested that the State "might" be able to prevent the formation of contract rights with a more specific right-to-amend clause. App. 33a-34a. To do so, however, the court believed that such a clause would have to state "unmistakably" that "any benefits provided by statute would *not* be contractual in nature." App. 34a n.7 (emphasis added). That analysis turned this Court's precedents on their head. This Court has instructed that courts must analyze whether a legislature has contracted *away* its sovereign authority in "unmistakable terms." *Bowen*, 477 U.S. at 52 (quoting *Merrion*, 455 U.S. at 148). But the court below instead shifted the burden to the State to prove in unmistakable terms that it had *not* contracted away its sovereign power.

In so ruling, the court declined to address the State's alternative argument that any contract would incorporate the right-to-amend clause itself. *See Blaisdell*, 290 U.S. at 429-30. Thus, even assuming that Respondents had a contractual right to health benefits of some kind, when the State amended the details of those benefits, it was merely exercising a contractual right. *See Bowen*, 477 U.S. at 52.

For all these reasons, the decision below sharply diverged from this Court's precedents. Review of that

decision is therefore warranted to ensure conformity with the decisions of this Court.

III. This Case Squarely Presents an Important Question of Constitutional Law.

This case also warrants review because the issue of how States can protect themselves from Contracts Clause liability when they legislate in the area of government benefits is exceptionally important. *See* S. Ct. R. 10(b), (c).

States need assurance that when they establish benefit programs for government employees, they will not stand accused of violating the Constitution when they exercise a reserved right to amend those programs. Without that assurance, States could face debilitating costs that pose "a threat to the sovereign responsibilities of state governments" to manage the public fisc in ways that benefit all their citizens. *United States v. Winstar Corp.*, 518 U.S. 839, 874 (1996).

Providing benefits to retired state employees can be incredibly costly. Pension costs in particular can be staggering: In 2021, States were collectively estimated to face $4.6 trillion in future pension costs for current and future retirees. *See* The Pew Charitable Trs., *The State Pension Funding Gap: Plans Have Stabilized in Wake of Pandemic* 27 (Sept. 14, 2021). Costs of that magnitude, when mismanaged, can endanger a government's overall solvency. In recent times, for example, Puerto Rico accumulated $55 billion in unfunded pension costs, creating a fiscal crisis that required Congress to enact

legislation allowing the territory to declare bankruptcy. *See In re Fin. Oversight & Mgmt. Bd. for P.R.*, 32 F.4th 67, 74-75 (1st Cir. 2022); *see also Fin. Oversight & Mgmt. Bd. for P.R. v. Aurelius Inv. LLC*, 140 S. Ct. 1649, 1655 (2020).

The cost of providing health benefits for retirees can also be considerable. For decades, increases in health care spending have consistently outpaced the growth of the rest of the economy. *See* Nisha Kurani et al., *How has U.S. spending on healthcare changed over time?*, Peterson-KFF Health System Tracker (Feb. 25, 2022). Those increases have added considerably to state spending on benefits for retired state employees. In 2015 alone, States collectively spent $20.8 billion on non-pension benefits to retired employees, almost all of which went toward health costs. *See* The Pew Charitable Trs., *State Retiree Health Care Liabilities: An Update* 1 (Sept. 19, 2017). That figure reflected an annual spending increase of 6%. *Id.* And States were at that time predicted to face $693 billion in future anticipated costs for non-pension benefits for their retired employees. *Id.*

North Carolina itself faces anticipated future retiree health costs of $33.5 billion. *See* Office of the State Controller, *State of North Carolina: Annual Comprehensive Financial Report* 235 (June 30, 2021). To date, the State has set aside only $2.6 billion to meet these future costs, which no court had ever before held were contractual obligations. *Id.*

Thus, this case is itself proof that when States lose the flexibility to reform employee benefits, the fiscal burden can be profound. The potential liability that

North Carolina faces in this lawsuit is so large that it has been required to report the case to its creditors, as one of the few liabilities that could affect the State's bond rating. *See id.* at 191. If Respondents obtain their requested relief, the State could be forced to pay retrospective damages in excess of $100 million. *Id.* And that figure pales in comparison to the potential cost of compliance with any prospective injunction. If an injunction required the State to provide Respondents with a plan similar in value to the one in place before this lawsuit, the State could be forced to incur added future costs exceeding $1 billion. As healthcare costs increase, moreover, such an injunction could also prevent the State from making future reforms to retiree health benefits, almost all of which are unfunded. These realities reinforce that judicial decisions transforming discretionary statutory benefits for government employees into fixed contractual rights can be fiscally devastating.

Decisions like these also deprive state governments of the budgetary flexibility to meet other important needs, such as providing for education and public safety. This lack of flexibility can ultimately harm state employees themselves. Rather than face the prospect that statutory benefits could be deemed contractually guaranteed, state legislatures could be "unduly discourage[d] . . . from offering [benefit] plans in the first place." *Heimeshoff v. Hartford Life & Accident Ins. Co.*, 571 U.S. 99, 108 (2013). Indeed, almost immediately after the trial court entered its injunction in this case, the North Carolina General Assembly eliminated retirement health benefits for

future state employees. *See* Act of June 17, 2017, S.L. 2017-57, § 35.21(c), 2017 N.C. Sess. Laws 248, 631. This choice highlights that review of the decision below is needed to ensure that States retain the flexibility as sovereigns to manage their own fiscal affairs in ways that benefit all their citizens.

Finally, review is also needed to fill a gap in this Court's jurisprudence. This Court has provided definitive guidance on how to avoid contractual liability for employee benefits in other contexts, but it has not yet done so for state and local governments. States therefore lack clarity from this Court on how they can structure their benefit programs without giving rise to liability under the Contracts Clause.

For example, as noted above, this Court has held that Congress's decision to include a right-to-amend clause in the Social Security Act makes clear that Social Security benefits are "noncontractual." *Flemming*, 363 U.S. at 611. As a result, Congress knows that if it reserves the right to amend or repeal a benefits program, courts will honor that reservation.

This Court has also recently clarified the rules that govern benefits to retired employees in the private sector. In *M&G Polymers USA, LLC v. Tackett*, this Court addressed whether the Sixth Circuit, alone among the circuits, had properly developed a series of presumptions that placed "a thumb on the scale in favor of [finding] vested retiree benefits in all collective-bargaining agreements." 574 U.S. at 438. Those rules of construction required courts to presume that, absent express indication otherwise, agreements to provide benefits had an indefinite

duration. *Id.* at 440. This Court concluded that these kinds of presumptions had no basis in law. It therefore reversed a Sixth Circuit decision that had held that certain retirees had a right, similar to what Respondents claim here, to "lifetime contribution-free health care benefits." *Id.* at 430; *see also CNH*, 138 S. Ct. at 763 (summarily reversing attempt to resurrect presumptions that favor lifetime vesting).

This Court, however, has not provided analogous guidance to States on how they can retain the flexibility to amend statutory retirement benefits. That lack of guidance, as shown above, has engendered considerable litigation over the last several decades. *See supra* pp. 8-15. The great majority of courts have held that state legislatures, just like Congress, can protect themselves from contractual liability by expressly reserving the right to amend statutory benefit programs. But a minority of courts have given short shrift to those reservations, exposing States to potentially crushing liability under the Contracts Clause.

This case provides an ideal vehicle for this Court to choose between these two approaches. It cleanly presents the question whether a statutory right-to-amend provision categorically forecloses liability under the Contracts Clause—or whether, as the court held below, non-statutory evidence like retirees' "reasonable expectation[s]" can overcome such a provision. App. 35a (cleaned up). In the private employment context, this Court has held that courts err when, despite clear contractual text providing otherwise, they rely on "extrinsic evidence" to support

a finding of "lifetime vesting" of benefits. *CNH*, 138 S. Ct. at 765-66. This case provides an ideal opportunity for this Court to clarify that similar reliance on extrinsic evidence is inappropriate in the public employment context.

CONCLUSION

This Court should grant certiorari and reverse the decision of the North Carolina Supreme Court.

Respectfully submitted,

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