App. 1

**United States Court of Appeals**

**For the First Circuit**

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No. 21-1382

BINYAMIN I. EFREOM; MARILYN C. DISTEFANO; SUSAN L. HARTNETT; ADRIENNE R. DIMEO; MARY G. KENNEDY; CYNTHIA J. RONDEAU; MARY O'CONNELL MCKENNA; TIMOTHY H. MURPHY; DENNIS F. ZIROLI; ANNMARIE BOLVIN; WILLIAM P. BERUBE; JOSEPH F. CLIFFORD, III; ANTONETTA R. MELLO; MAUREEN RITA VAVOLOTIS; WILLIAM BLAIR; PATRICIA E. GIAMMARCO; BARBARA A. MOUSSALLI; SANDRA A. CURRAN; KATHLYNE E. WALSH; WILLIAM H. FERGUSON; CAROL SCHNEIDER; JOANNE A. MATISEWSKI; LAURIE A. SCIALABBA; JEAN PETISCE-LYNCH; ANTHONY T. BAGAGLIA; JOANN C. LOMBARDI; ANTHONY J. RICCI; JAMES E. BARDEN; NANCY A. LEMME; MARY F SHERLOCK; PAMELA J. DELVECCHIO; JANET KELLER; DEAN L. LEES; ROBERT M. PESATURO, JR.; JANICE M. COLERICK; JAMES H. COX; KATHLEEN A. CRESCENZO; SANDRA L. MCCULLOUGH; MICHAEL N. SENERCHIA; KAREN M. TANNER; NORMA JEAN PALAZZO; DAVID GOODMAN; ROBERT J. DIMAIO; FRANCESCA BEDELL; JAMES BEDELL; MARGARET HARRIS; MARY KATHERINE O'NEILL; BRIAN KENNEDY,

Plaintiffs, Appellants,

App. 2

GREGORY MARCELLO,

Plaintiff,

v.

DANIEL J. MCKEE, in his capacity as Governor of the State of Rhode Island; EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND, by and through FRANK J. KARPINSKI, its Executive Director; SETH MAGAZINER, in his capacity as Chairperson of the Retirement Board,

Defendants, Appellees.

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APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

[Hon. William E. Smith, U.S. District Judge]

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Before

Barron, Chief Judge,
Selya and Gelpí, Circuit Judges.

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George J. West for appellants.

Nicole J. Benjamin, with whom John A. Tarantino, Adler Pollock & Sheehan P.C., Michael W. Field, and Rhode Island Office of Attorney General, for appellees Daniel J. McKee, in his capacity as Governor of the State of Rhode Island, Seth Magaziner, in his capacity

as Chairperson of the Retirement Board, and the Employees' Retirement System of Rhode Island.

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August 18, 2022

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**GELPÍ, Circuit Judge**. This is an appeal from an order and judgment granting defendant-appellees' motion to dismiss appellants' complaint under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Appellants are forty-nine members of a class of retired Rhode Island public employees impacted by changes to the state's retirement benefits scheme, as initially implemented by the Rhode Island Retirement Security Act of 2011 ("RIRSA"), and subsequently modified by legislation in 2015 (the "2015 Amendments"). The latter was enacted pursuant to a class-action settlement agreement reached following litigation in state court, in which each appellant was a party. Unsated by what they consider to be meager relief, appellants now seek redress in federal court under 42 U.S.C. § 1983, alleging various constitutional violations in the changes to Rhode Island's retirement benefits scheme (Counts I-IV) and in the class-action settlement agreement itself (Count V). However, in attempting to effectively appeal a final judgment of the Rhode Island Supreme Court, appellants run afoul of the Rooker-Feldman doctrine with respect to Counts I-IV. See Rooker v. Fid. Tr. Co., 263 U.S. 413 (1923); D.C. Ct. of Appeals v. Feldman, 460 U.S. 462 (1983). Count V, meanwhile, fails due to a lack

of standing. As such, we affirm the district court's dismissal for want of subject-matter jurisdiction.

## I. Background[1]

Facing a steep budget deficit in the wake of the 2008 financial crisis, Rhode Island enacted RIRSA in 2011 to shore up its then-precarious pension system, the Employees' Retirement System of Rhode Island ("ERSRI"). 2011 R.I. Pub. Laws ch. 408-409; see also id. ch. 408 § 1(a)(1) (finding that "[t]he State of Rhode Island has one of the lowest funded and most vulnerable statewide pension systems in the country"); Cranston Firefighters, IAFF Loc. 1363 v. Raimondo, 880 F.3d 44, 46 (1st Cir. 2018) ("By 2011, Rhode Island's public employee pension system itself faced dire underfunding, which the state legislature labeled a 'fiscal peril' that threatened the ability of Rhode Island's municipalities to provide basic public services."). RIRSA, which followed previous pension reforms enacted in 2009 and 2010, altered in various ways the retirement benefits to which public employees were entitled, including by reducing the amount and availability of cost-of-living adjustment ("COLA") payments to retirees. See R.I. Pub. Emps. Retiree Coal. v. Raimondo (RIPERC I), No. PC 2015-1468, 2015 WL 1872189, at *1, *6 (R.I. Super. Ct. Apr. 16, 2015). The Rhode Island Superior Court summarized these changes as follows:

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[1] The parties do not dispute the relevant facts, as outlined in the district court's opinion and the various state court decisions relating to this case.

For state employees who were eligible to retire but had not yet retired as of July 1, 2012, RIRSA changed the formula by which their retirement allowance would be calculated. For correctional officers, RIRSA also altered the rules governing retirement eligibility and changed the formula for their retirement allowance. For teachers who were not eligible to retire as of July 1, 2012, RIRSA increased the retirement age, changed the formula for calculating the retirement allowance, and changed the employee contribution rate. RIRSA also made changes to the retirement benefits for municipal employees who were members of the Municipal Employees Retirement System (MERS), which is also part of the ERSRI. For all members receiving retirement benefits under the ERSRI, including those employees who had already retired as of June 30, 2012, RIRSA reduced the amount of the annual COLA benefit, limited the COLA to apply only to the first $25,000 of a member's retirement benefit, and suspended the annual COLA making it payable once every five years until the various pension plans were at least 80% funded. In addition, RIRSA changed the structure of the retirement program from a traditional defined benefit plan to a "hybrid plan" with a smaller defined benefit plan and a supplemental defined contribution plan. For active Police and Firefighters, RIRSA made a number of other changes including increasing the minimum service requirement and adding a minimum retirement age of 55 years.

R.I. Pub. Emps. Retiree Coal. v. Raimondo (RIPERC II), No. PC 2015-1468, 2015 WL 3648161, at *2 (R.I. Super. Ct. June 9, 2015); see also Cranston Firefighters, 880 F.3d at 45-46 (outlining the history of the Rhode Island pension system and summarizing RIRSA). The upshot was a "severe diminution" in the anticipated retirement benefits for affected public employees. Clifford v. Raimondo, 184 A.3d 673, 679 (R.I. 2018).

Litigation promptly ensued in state court. Unions, retiree associations, and individuals filed lawsuits alleging that RIRSA violated the contract, takings, and due process clauses of the Rhode Island Constitution. See RIPERC I, 2015 WL 1872189, at *1 (cataloguing the numerous challenges to RIRSA). Appellants, alongside some 150 other retired public employees, were plaintiffs in one such case ("the Clifford action") filed in Rhode Island Superior Court in 2014, which focused on RIRSA's cuts to retirees' COLAs. Clifford v. Chafee, No. KC-2014-345 (R.I. Super. Ct. Jan. 14, 2015). The various pension cases, including the Clifford action and previous suits challenging the 2009 and 2010 pension reforms on identical constitutional grounds, were eventually consolidated for trial.

After extensive discovery, and with the assistance of a special master, most of the parties to the consolidated action reached a proposed settlement agreement.[2] RIPERC I, 2015 WL 1872189, at *2. In April

[2] A few parties, representing a group of active police officers and the police and fire personnel of the City of Cranston, did not agree to the proposal. Consequently, these parties – who had previously filed three pension lawsuits that were joined in the

2015, a class-action lawsuit was filed for settlement purposes, in which the Superior Court certified the following plaintiff class:

> All persons (and/or their beneficiaries) who, on or before July 1, 2015, are receiving benefits or are participating in the State Employees, Teachers, or Municipal Employees' retirement systems administered by ERSRI and all future employees, excepting only those individuals who on July 1, 2015, are participating in a municipal retirement system administered by ERSRI for municipal police officers in any municipality and/or for fire personnel of the City of Cranston.

Id. at *10. The Superior Court also certified a plaintiff subclass comprising "[a]ll retired members and beneficiaries who retired on or before June 30, 2015, who are receiving a retirement benefit under ERS [Teachers and State Employees Retirement System] or any MERS unit," designating class representatives and appointing class counsel for the same. Id. The plaintiffs in the Clifford action, and appellants here, were all members of that retiree subclass. Support for the proposed settlement was not unanimous among the individual class members, and appellants here were among those who opposed the proposal Nonetheless, because the court certified the class under Rule 23(b)(2) of the Rhode Island Superior Court Rules of Civil Procedure,

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consolidated action – were not included in the subsequent class-action lawsuit and settlement. See RIPERC I, 2015 WL 1872189, at *2.

objecting members were not permitted to opt out of the class.[3] Id.; cf. Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 362 (2011) (noting that Federal Rule of Civil Procedure 23(b)(2) likewise "provides no opportunity for . . . class members to opt out"). In the same decision, the Superior Court preliminarily approved the settlement as fair, adequate, and reasonable. RIPERC I, 2015 WL 1872189, at *10.

The proposed settlement was conditioned upon the passage of the 2015 Amendments, which would entitle pensioners and public employees to certain greater benefits than provided under RIRSA. The Superior Court summarized the relevant provisions of the 2015 Amendments:

> - A one-time COLA payment of 2% applied to the first $25,000 of the pension benefit and that amount added to the base benefit will be paid to retirees (or their beneficiaries) who participate in a COLA program and who retired on or before June 30, 2012 as soon as administratively reasonable following the passage of the legislation based on the amount of benefit

[3] In relevant part, Rule 23(b)(2) provides that a class action may be maintained if, in addition to meeting the standard Rule 23(a) prerequisites of numerosity, commonality, typicality and adequacy of representation, "[t]he party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole. . . ." R.I. Super Ct. R. Civ. P. 23(b)(2).

payable on the effective date of the legislation.

- For funds that are not already funded, the settlement shortens the time intervals between suspended COLA payments from once every five years to once every four years. The settlement also improves the COLA limitation for current retirees whose COLA is suspended. The settlement also requires a more favorable indexing of COLA Cap for all current and future retirees. The settlement also changes the COLA calculation to one more likely to produce a positive number and dictates that the COLA formula will be calculated annually, regardless of funding level, and when paid, the COLA will be compounded for all receiving a COLA.

- Current retirees (or their beneficiaries) who have or will have retired on or before June 30, 2015 will receive two payments: (1) a one-time $500.00 stipend (not added to the COLA base) within sixty days of the enactment of the legislation approving the terms of the settlement and (2) a one-time $500 stipend payable one year later.

- For State Workers, Teachers, and General MERS, the settlement (1) adds another calculation to reduce the minimum retirement age; (2) improves the available accrual rate for employees with twenty years or more of service as of June 30,

2012; (3) requires increased contributions by the employer to the Defined Contribution Plan for employees with ten or more years of service (but less than twenty) as of June 30, 2012; (4) waives the administration fee for any employees participating in the Defined Contribution Plan who make $35,000 or less; and (5) adds another calculation designed to limit the impact of the "anti-spiking" rule imposed by the RIRSA on part-time employees.

- For MERS Firefighters (excluding Cranston Firefighters), the settlement (1) lowers the age and service requirements for retirement; (2) increases the accrual rate for Firefighters who retire at age fifty-seven with thirty years of service.
- For State Correctional Officers, the settlement increases the accrual rate for correctional officers with fewer than twenty-five years of service as of June 30, 2012.
- The settlement reduces the impact of an early retirement.
- The settlement allows Municipalities to "re-amortize"; that is, partially refinance, to be able to pay for the increased cost of the settlement.
- Otherwise, the terms of the RIRSA remain the same.

Id. at *3-4. The settlement agreement also included covenants wherein the parties agreed not to "directly

or indirectly, propose, support, encourage or advocate for any legislative action concerning or relating to retirement benefits other than the adoption of the [2015 Amendments]," nor to "directly or indirectly, propose, support, encourage or advocate that any other person, firm or entity do anything or refrain from doing something that a party to [the] Settlement Agreement would be prohibited from doing or refraining from doing hereunder."

In May 2015, the Superior Court held a five-day fairness hearing regarding the proposed settlement. The hearing was vigorously contested. Approximately 400 class members provided written objections to the settlement in advance of the hearing, and 35 addressed the court at the hearing to articulate their concerns. RIPERC II, 2015 WL 3648161, at *6, *12 n.16. In June 2015, the court approved the settlement as fair, reasonable, and adequate, rejecting the objecting class members' contentions that the settlement was procedurally or substantively deficient. Id. at *31. Shortly thereafter, Rhode Island passed the 2015 Amendments, amending RIRSA in accordance with the settlement agreement. See 2015 R.I. Pub. Laws ch. 141, § 21. The Superior Court subsequently entered judgment on the class-action lawsuit, determining:

> This Judgment is final and shall be binding on all parties and all class members in the above-referenced class action case for settlement purposes. Additionally, all class members are forever and completely barred from ever asserting any claims or causes of action that

> were alleged or brought or that could have been alleged or brought with respect to the various challenges to the Rhode Island pension statutes made and asserted in the above-captioned action and in each of the following matters, C.A. Nos. 10-2859, 12-3166, 12-3167, 12-3168, 12-3579, KC 14-0345 [i.e., the Clifford action], as the Court has previously found, determined and ruled that the terms and conditions of the Settlement Agreement, as now implemented and made effective by the Pension Legislation, are fair and reasonable.

R.I. Pub. Emps. Retiree Coal. v. Raimondo (RIPERC III), No. PC 2015-1468, 2015 WL 4501873, at *1 (R.I. Super. Ct. July 8, 2015), aff'd, Clifford, 184 A.3d at 695. Concurrently, the court dismissed the Clifford action with prejudice. Clifford v. Raimondo, No. KC 14-0345 (R.I. Super. Ct. July 8, 2015). A group of class members (including all appellants here) appealed both judgments, contesting the propriety of the class certification and the procedural and substantive fairness of the settlement. In 2018, the Rhode Island Supreme Court affirmed the Superior Court's decisions, finding that the trial justice "did not abuse her discretion in certifying the class" and in "concluding that the settlement was fair, reasonable, and adequate." Clifford, 184 A.3d at 690, 695.

Undeterred, appellants in 2020 sued the Governor of Rhode Island, ERSRI, and the Chairperson of the Retirement Board in federal court under 42 U.S.C. § 1983, alleging various violations of the Federal Constitution in connection with the changes to Rhode

Island's retirement benefits scheme. In the first four Counts of their Complaint, appellants – purporting to challenge the 2015 Amendments rather than RIRSA – asserted that the reduction of their pension benefits violated the Due Process Clauses of the Fifth and Fourteenth Amendments, the Contract Clause of Article I, Section 10, and the Takings Clause of the Fifth Amendment.[4] Appellants also alleged, in Count V, that the covenants concerning advocacy for legislative action in the settlement agreement abridged their right to petition in violation of the First and Fourteenth Amendments. Defendants moved to dismiss for failure to state a claim. The district court granted the motion, holding that appellants' claims were barred, inter alia, by res judicata, a lack of Article III standing, and the Rooker-Feldman doctrine. Efreom v. McKee, No. 20-122, 2021 WL 1424974, at *4-11 (D.R.I. Apr. 15, 2021). Appellants timely appealed.

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[4] As the district court noted, although appellants mistakenly referenced Article V, Section 10 of the Constitution in support of their Contract Clause claim, they "clearly intended to refer to Article I, Section 10." Efreom v. McKee, No. 20-122, 2021 WL 1424974, at *3 n.6 (D.R.I. Apr. 15, 2021). Further, because appellants' untitled Count IV "does not assert a separate cause of action" but "instead provides additional arguments to support Counts I, II, and III," we follow the district court in considering this claim together with the Contract, Takings, and Due Process Clause claims. Id. at *3.

## II. Discussion

### 1. Standard of Review

"We review a dismissal for lack of subject matter jurisdiction de novo, 'accepting the plaintiffs' well-pleaded facts as true and indulging all reasonable inferences to their behoof.'" Davison v. Gov't of P.R-P.R. Firefighters Corps, 471 F.3d 220, 222 (1st Cir. 2006) (quoting McCloskey v. Mueller, 446 F.3d 262, 266 (1st Cir. 2006)).

### 2. Appellants' Due Process, Takings, and Contracts Clause Claims Are Barred by the Rooker-Feldman Doctrine

Appellees contend, and the district court determined, that appellants lack Article III standing with respect to Counts I-IV. See Efreom, 2021 WL 1424974, at *8-9. As such, before we consider any merits issues, we must begin by addressing the "threshold matter" of whether we have federal subject-matter jurisdiction over these claims. See Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94-95 (1998). Because we conclude under the Rooker-Feldman doctrine that we lack jurisdiction, our inquiry with respect to Counts I-IV ends here.[5]

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[5] "The Rooker-Feldman doctrine . . . implicates statutory, not Article III, jurisdiction." Sinapi v. R.I. Bd. of Bar Exam'rs, 910 F.3d 544, 550 (1st Cir. 2018) (emphasis omitted). Because we lack the former, we need not address the latter. See Lance v. Coffman, 549 U.S. 437, 439 & n* (2007) (per curiam) (explaining that federal courts may bypass Article III standing inquiry to determine

Under the Rooker-Feldman doctrine, we lack jurisdiction to consider "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005). The doctrine prevents losing litigants "from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights," as only the Supreme Court has jurisdiction to review the decision of a state court in civil litigation. Id. at 287 (quoting Johnson v. De Grandy, 512 U.S. 997, 1005-06 (1994)); see also 28 U.S.C. § 1257(a) (providing that "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari," rather than by inferior courts).

It is just this type of impermissible appellate review that appellants seek in federal court. Dissatisfied with the outcome of the state-court litigation, appellants ask us to set aside the Rhode Island state courts' approval of the RIPERC class-action settlement, in an

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jurisdiction under Rooker-Feldman); Am. Petroleum Inst. v. Env't Prot. Agency, 862 F.3d 50, 75 (D.C. Cir. 2017) ("[B]ecause we dispose of [petitioners'] challenge by concluding that we are without statutory jurisdiction, we have no reason to address [the] contention that [petitioners] lack Article III standing."), decision modified on reh'g, 883 F.3d 918 (D.C. Cir. 2018).

action commenced over two years after the Rhode Island Supreme Court rendered its final decision on the matter. It is undisputed that appellants (and defendants) were all parties to the original Clifford action, the RIPERC class, and the final appeal to the Rhode Island Supreme Court in Clifford v. Raimondo.[6] As such, appellants are "state-court losers" seeking, in effect, to review and reverse "state-court judgments rendered before the district court proceedings commenced." Exxon Mobil Corp., 544 U.S. at 284.

Appellants nonetheless attempt to escape the vise of Rooker-Feldman by disputing, essentially, that their alleged injuries were actually "caused by" the state-court judgments. Id. To this end, appellants emphasize that they primarily contest the constitutionality of the 2015 Amendments, whereas the earlier state-court judgments concerned RIRSA. On this theory, passage of the 2015 Amendments – by dint of "creating a distinct new law" – worked a separate injury from that at

[6] In a different context, appellants assert that because they were not in support of the RIPERC class settlement, their inclusion in the class was improper, and thus that identicality of parties between the instant case and the state-court litigation would not be satisfied for res judicata purposes. This argument is a non-sequitur: The mere fact that appellants disapproved of the settlement, but were outnumbered by supportive class members, does not render them nonparties to the RIPERC action or the subsequent appeal to the Rhode Island Supreme Court. In any event, appellants have not argued that they were not a "losing party" for purposes of the Rooker-Feldman doctrine, Exxon Mobil Corp., 544 U.S. at 291, so any such contention has been waived. See Young v. Wells Fargo Bank, N.A., 717 F.3d 224, 239-40 (1st Cir. 2013).

issue in the state-court litigation, and this should suffice to defeat the Rooker-Feldman doctrine.

Even assuming arguendo that appellants' claims are indeed based on the 2015 Amendments rather than RIRSA,[7] appellants' attempts to evade the Rooker-Feldman doctrine fail. Passage of the 2015 Amendments was a condition precedent for the settlement agreement that resolved the state-court pension litigation. Indeed, as the district court noted, "[t]he purportedly unconstitutional sections [of the 2015 Amendments] identified in the Complaint were contained verbatim in the settlement agreement," Efreom, 2021 WL 1424974, at *10, and the propriety of said settlement is the source of the alleged injury here. Appellants' attempt to undo the state-court rulings approving the settlement is precisely the sort of "end-run around a final state-court judgment" that the Rooker-Feldman doctrine proscribes.[8] Klimowicz v. Deutsche Bank Nat'l

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[7] The district court rejected this characterization, finding that RIRSA was the true basis for appellants' claims. See Efreom, 2021 WL 1424974, at *6-7. Nonetheless, the district court held, as we do, that the Rooker-Feldman doctrine would bar the suit "[e]ven if Counts I to IV were based on the 2015 [Amendments]." Id. at *10-11.

[8] Appellants do not contest that a settlement agreement can be a "final judgment" for purposes of the Rooker-Feldman doctrine. We thus assume, without deciding, that the settlement agreement at issue here was a final judgment under Rooker-Feldman. See Crestview Vill. Apartments v. U.S. Dep't of Hous. & Dev., 383 F.3d 552, 556 (7th Cir. 2004) ("For Rooker-Feldman purposes, a 'state court approved settlement agreement is a judgment or decision. . . .' " (quoting 4901 Corp. v. Town of Cicero, 220 F.3d 522, 528 n.5 (7th Cir. 2000))); Reyes v. Fairfield Props., 661 F. Supp. 2d 249, 273 (E.D.N.Y. 2009) (holding that settlement agreements

Tr. Co., 907 F.3d 61, 66 (1st Cir. 2018). Appellants' attempted reliance on cases such as Skinner v. Switzer, 562 U.S. 521 (2011) and Whole Woman's Health v. Hellerstedt, 579 U.S. 582 (2016), abrogated on other grounds by Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (2022), is thus misplaced, as the instant suit does not present an "independent claim" from the state-court litigation. Skinner, 562 U.S. at 532 (quoting Exxon Mobil Corp., 544 U.S. at 293).[9]

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"constitute a state court judgment for purposes of Rooker-Feldman"); cf. Reppert v. Marvin Lumber & Cedar Co., 359 F.3d 53, 56 (1st Cir. 2004) (noting that, in the context of res judicata and release, "it is beyond cavil that a suit can be barred by the earlier settlement of another suit" (quoting Nottingham Partners v. Trans-Lux Corp., 925 F.2d 29, 31-32 (1st Cir. 1991))).

[9] Skinner held that "a state-court decision is not reviewable by lower federal courts, but a statute or rule governing the decision may be challenged in a federal action." 562 U.S. at 532. Here, however, in challenging the settlement approved by the Rhode Island state court, appellants do not contest any rule or law governing the state-court decisions, but "challenge the adverse [state-court] decisions themselves." Id. This, per Skinner, is exactly what the Rooker-Feldman doctrine bars. Id.

Whole Woman's Health, which did not involve the Rooker-Feldman doctrine, is even less on point. In Whole Woman's Health, the Supreme Court found that res judicata did not bar an as-applied, postenforcement challenge to a Texas law imposing an onerous admitting-privileges requirement on abortion providers, where the factual landscape changed dramatically after the litigants brought a preenforcement challenge to the law. 579 U.S. at 601. There are no such "changed circumstances" or "new material facts" here that generate a new constitutional claim. Id. at 599, 601. While appellants express general displeasure with Rhode Island's implementation of the pension reforms, and hypothesize that the state may attempt to shirk its pension obligations in the future, appellants have not articulated a specific, cognizable

That the instant claims are grounded in the Federal Constitution, rather than the Rhode Island Constitution, does not provide any succor for appellants. "[A] plaintiff cannot escape the Rooker-Feldman bar through the simple expedient of introducing a new legal theory in the federal forum that was not broached in the state courts." Id. Indeed, our precedents make clear that litigants cannot "avoid the impact of the Rooker-Feldman doctrine simply by recasting [their] claims in federal court as arising under the United States Constitution, where adjudicating these claims would 'necessarily require reviewing the merits of the [state court's] decision.'" Sinapi, 910 F.3d at 549 (quoting McKenna v. Curtin, 869 F.3d 44, 48 (1st Cir. 2017)); see also Maymó-Meléndez v. Álvarez-Ramírez, 364 F.3d 27, 33 (1st Cir. 2004) ("Rooker-Feldman does not depend on what issues were actually litigated in the state court; and it is enough that granting [litigants the relief they] seek[] would effectively overturn the state court's decision.").[10]

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claim that Rhode Island's postenactment behavior vis-à-vis the 2015 Amendments violates the Constitution. Any argument to this effect has thus been waived. See United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990) ("[I]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived.").

[10] We note, in any event, that appellants' federal claims largely echo their previous attacks on the propriety of the settlement in state court. Indeed, the fairness, adequacy, and reasonableness of the settlement agreement (including the proposed legislation that became the 2015 Amendments) were energetically contested at the fairness hearing, approved by the Superior Court, and affirmed by the Rhode Island Supreme Court. See

Appellants also claim that Rooker-Feldman should not apply because their due process rights were violated by the Rhode Island courts' decision to certify the RIPERC class under Rule 23(b)(2) of the Rhode Island Superior Court Rules of Civil Procedure, which does not afford class members any opt-out rights. In support of their argument, appellants allege that they were treated differently from another group of pension litigants opposed to the settlement agreement – i.e., the active police officers and fire personnel of the City of Cranston (the "Cranston litigants") – who were not included in the certified class and thus able to litigate separately. See Cranston Firefighters, 880 F.3d at 47 (noting that while the Cranston litigants "receive some of the advantages of the 2015 Amendments, they did not participate in the settlement, and their members are not subject to the state court judgment approving the settlement"). Asserting that the "[s]tate [c]ourts did not take up the issue of the[ir] disapproval" of the settlement or consider their "repeated[ ] request[s]" to opt out of the class, in light of the Cranston litigants' exclusion therefrom, appellants posit that they were denied due process. This alleged due process violation, appellants suggest, generates an exception to the Rooker-Feldman jurisdictional bar.[11]

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RIPERC II, 2015 WL 3648161, at *31; Clifford, 184 A.3d at 695. The fact that the issues appellants now raise in federal court were, in substantial measure, raised and rejected in state court accords with our independent conclusion that these claims are grounded in an injury attributable to the state-court judgments.

[11] The existence of an exception wherever there is a claim of a due process violation is dubious. See, e.g., Abbott v. Michigan,

Appellants' due process claim, however, does not clear Rooker-Feldman's hurdle. The propriety of the class certification under Rule 23(b)(2) – and appellants' assertion that they ought to have been afforded an "opt out" right – were in fact extensively litigated in state court. See RIPERC I, 2015 WL 1872189, at *7-8 (determining that the proposed class met the criteria for certification under Rule 23(b)(2) of the Rhode Island Superior Court Rules of Civil Procedure); RIPERC II, 2015 WL 3648161, at *13-14, *24 (noting certain class members' "desire to 'opt out' of the current settlement" but determining that "due process does not require that the Objectors be given the opportunity to 'opt out' of a Rule 23(b)(2) class action settlement"); Clifford, 184 A.3d at 685-90 (discussing class certification and certain litigants' asserted opt-out rights, but concluding that "trial justice's inclusion of the Retiree plaintiffs in the retiree subclass was proper" and that "the trial justice did not abuse her discretion in certifying

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474 F.3d 324, 330 (6th Cir. 2007) (concluding that "the Supreme Court's recent decisions do not support the plaintiffs' asserted 'reasonable opportunity' exception to the Rooker-Feldman doctrine"); Postma v. First Fed. Sav. & Loan of Sioux City, 74 F.3d 160, 162 n.3 (8th Cir. 1996) ("[T]here is no procedural due process exception to the Rooker-Feldman doctrine."). For a survey of the jurisprudential thicket surrounding this issue, see generally 18B Wright, Miller & Cooper, Federal Practice and Procedure § 4469.3, at 163-70 (3d ed. 2019) (stating that "[s]tate-court disregard of due process rights creates genuine trouble for the Rooker-Feldman jurisdiction theory," but noting that much caselaw "suggest[s] that federal jurisdiction is defeated [even] by a state judgment entered after proceedings that did not afford a full-and-fair opportunity to litigate, and indeed did not satisfy due process requirements").

the class pursuant" to Rule 23(b)(2)). Thus, in no way were appellants denied the opportunity to be "actually heard on their claims." Accordingly, even if we were to agree that federal jurisdiction might be available in certain instances where a party was denied a full-and-fair opportunity to litigate its claims, no such exception to the Rooker-Feldman doctrine is applicable here. See Mandel v. Town of Orleans, 326 F.3d 267, 272 & n.4 (1st Cir. 2003) (denying jurisdiction under Rooker-Feldman to federal due process challenge to state child custody enforcement proceedings when challenger "was formally a party to the enforcement proceeding and was free to ask the state court to undo or revisit its enforcement order on constitutional or other grounds").

"The Rooker-Feldman doctrine bars parties who lost in state court from 'seeking review and rejection of that judgment' in federal court." Puerto Ricans for P.R. Party v. Dalmau, 544 F.3d 58, 68 (1st Cir. 2008) (quoting Exxon Mobil Corp., 544 U.S. at 291). In attempting to effectively overturn the decisions of the Rhode Island state courts approving the RIPERC class-action settlement, Appellants in Counts I-IV run afoul of this stricture. Because under Rooker-Feldman "[o]nly the Supreme Court of the United States may invalidate state court civil judgments," see Miller v. Nichols, 586 F.3d 53, 59 (1st Cir. 2009), we lack jurisdiction over these claims.

### 3. Appellants' First Amendment Claims Are Nonjusticiable

Appellants lastly challenge the provisions of the settlement agreement that prohibited them from lobbying, directly or indirectly, for pension benefits other than as provided in the draft legislation that became the 2015 Amendments. By imposing such a restriction, appellants argue, these provisions created a "chilling effect" that violated their First Amendment rights to free speech and to petition the government for a redress of grievances. Accordingly, in their prayer for relief, appellants ask that these provisions of the settlement agreement be declared unconstitutional.

Before we can consider the merits of this argument, however, we must again assess whether we have jurisdiction, or if appellants instead lack standing to raise this claim. The "[s]tanding doctrine assures respect for the Constitution's limitation of '[t]he judicial Power' to 'Cases' and 'Controversies.'" Hochendoner v. Genzyme Corp., 823 F.3d 724, 731 (1st Cir. 2016) (alteration in original) (quoting U.S. Const. art. III, § 2, cl. 1). In assessing whether litigants have constitutional standing, we look to the "familiar amalgam of injury in fact, causation, and redressability," which injury "must be both 'concrete and particularized and actual or imminent, not conjectural or hypothetical.'" Id. (quoting Van Wagner Bos., LLC v. Davey, 770 F.3d 33, 37 (1st Cir. 2014)). Redressability concerns the "likelihood that the requested relief will redress the alleged injury." Steel Co., 523 U.S. at 103. "To determine whether an injury is redressable, a court will consider the

relationship between 'the judicial relief requested' and the 'injury' suffered." California v. Texas, 141 S. Ct. 2104, 2115 (2021) (quoting Allen v. Wright, 468 U.S. 737, 753 n.19 (1984)).

Per the terms of the settlement agreement, the covenant providing that the parties "will not, directly or indirectly, propose, support, encourage or advocate for any legislative action concerning or relating to retirement benefits other than the adoption of the [2015 Amendments]" expired upon "final approval of the settlement and enactment of the [2015 Amendments] and entry of judgment." All of these conditions were met in 2015, meaning that any chilling effect of this covenant ceased years before the instant litigation commenced.[12] As such, at the time appellants' federal complaint was filed, appellants were free to petition the government as they wished regarding their retirement benefits. Appellants thus allege only a past injury in relation to their First Amendment claim. Their complaint does not seek any damages for that claim, cf. Uzuegbunam v. Preczewski, 141 S. Ct. 792, 796 (2021) (holding that "an award of nominal damages by itself can redress a

[12] The agreement also restricted the ability of the parties to "directly or indirectly, propose, support, encourage and/or advocate that any other person, firm or entity do anything or refrain from doing something that a party to this Settlement Agreement would be prohibited from doing or refraining from doing hereunder," and provided that this covenant is "unlimited as to time." However, because the restrictions on appellants' pension advocacy lapsed upon the satisfaction of the conditions laid out above, any chilling effect from this covenant similarly thawed in 2015.

past injury"), and it is plain that plaintiffs lack standing to seek declaratory relief with respect to a past injury when such relief cannot redress the injury. See Berner v. Delahanty, 129 F.3d 20, 24 (1st Cir. 1997) (explaining that "a party seek[ing] exclusively injunctive or declaratory relief" has standing only upon showing "'a sufficient likelihood that he will again be wronged in a similar way'" (quoting City of Los Angeles v. Lyons, 461 U.S. 95, 111 (1983))); Am. Postal Workers Union v. Frank, 968 F.2d 1373, 1376-77 (1st Cir. 1992) (holding that plaintiffs lacked standing to seek declaratory or injunctive relief that would "provide no relief for an injury that is, and likely will remain, entirely in the past"; Lyons, 461 U.S. at 109-10 past injury, absent a reasonable likelihood of future repetition, provided apparent standing to pursue damages but no standing to seek injunctive relief); California, 141 S. Ct. at 2114-15 (challenge to an unenforceable statutory provision failed because there was no present or anticipated injury resulting from the provision's enforcement, and neither injunctive nor declaratory relief could provide redress in such circumstances).

Because appellants have not alleged any ongoing or potential injury from the now-inoperative covenants at issue, and have not sought relief that could redress their alleged past injury, their First Amendment claim lacks the "elements of a justiciable controversy." Steel Co., 523 U.S. at 95. "To find standing here to attack an unenforceable . . . provision would allow a federal court to issue what would amount to 'an advisory opinion without the possibility of any judicial relief.'"

California, 141 S. Ct. at 2116 (quoting Lyons, 461 U.S. at 129 (Marshall, J., dissenting)). Under Article III, we lack such authority. Id.; see also Mangual v. Rotger-Sabat, 317 F.3d 45, 60 (1st Cir. 2003) ("If events have transpired to render a court opinion merely advisory, Article III considerations require dismissal of the case."); N.E. Reg'l Council of Carpenters v. Kinton, 284 F.3d 9, 18 (1st Cir. 2002) (noting that "it would be pointless . . . to declare [the] constitutional status" of a restriction "that is no longer in effect").[13] As such, we dismiss appellants' First Amendment claim for lack of standing.

## III. Conclusion

The judgment of the district court is **affirmed**.

[13] Because we lack Article III jurisdiction over the First Amendment claim, we need not address the district court's conclusion that the claim was also barred by the Rooker-Feldman doctrine. See Efreom, 2021 WL 1424974, at *11.

**United States Court of Appeals**

**For the First Circuit**

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No. 21-1382

BINYAMIN I. EFREOM; MARILYN C. DISTEFANO; SUSAN L. HARTNETT; ADRIENNE R. DIMEO; MARY G. KENNEDY; CYNTHIA J. RONDEAU; MARY O'CONNELL MCKENNA; TIMOTHY H. MURPHY; DENNIS F. ZIROLI; ANNMARIE BOLVIN; WILLIAM P. BERUBE; JOSEPH F. CLIFFORD, III; ANTONETTA R. MELLO; MAUREEN RITA VAVOLOTIS; WILLIAM BLAIR; PATRICIA E. GIAMMARCO; BARBARA A. MOUSSALLI; SANDRA A. CURRAN; KATHLYNE E. WALSH; WILLIAM H. FERGUSON; CAROL SCHNEIDER; JOANNE A. MATISEWSKI; LAURIE A. SCIALABBA; JEAN PETISCE-LYNCH; ANTHONY T. BAGAGLIA; JOANN C. LOMBARDI; ANTHONY J. RICCI; JAMES E. BARDEN; NANCY A. LEMME; MARY F SHERLOCK; PAMELA J. DELVECCHIO; JANET KELLER; DEAN L. LEES; ROBERT M. PESATURO, JR.; JANICE M. COLERICK; JAMES H. COX; KATHLEEN A. CRESCENZO; SANDRA L. MCCULLOUGH; MICHAEL N. SENERCHIA; KAREN M. TANNER; NORMA JEAN PALAZZO; DAVID GOODMAN; ROBERT J. DIMAIO; FRANCESCA BEDELL; JAMES BEDELL; MARGARET HARRIS; MARY KATHERINE O'NEILL; BRIAN KENNEDY,

Plaintiffs, Appellants,

GREGORY MARCELLO,

Plaintiff,

v.

DANIEL J. MCKEE, in his capacity as Governor of the State of Rhode Island; EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND, by and through FRANK J. KARPINSKI, its Executive Director; SETH MAGAZINER, in his capacity as Chairperson of the Retirement Board,

Defendants, Appellees.

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**JUDGMENT**

Entered: August 18, 2022

This cause came on to be heard on appeal from the United States District Court for the District of Rhode Island and was argued by counsel.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The judgment of the district court is affirmed.

By the Court:

Maria R. Hamilton, Clerk

cc: George Joseph West, Michael W. Field, John A. Tarantino, Nicole J. Benjamin

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

| | |
|---|---|
| BINYAMIN I. EFREOM, et al.,<br>Plaintiffs,<br>v.<br>DANIEL J. McKEE, in his capacity as Governor of Rhode Island, et al.,<br>Defendants. | C.A. No. WES 20-122 |

**MEMORANDUM AND ORDER**

(Filed Apr. 15, 2021)

WILLIAM E. SMITH, District Judge.

49 members of the Employees' Retirement System of the State of Rhode Island claim that reductions in their pension benefits are unconstitutional. Defendants seek dismissal, arguing, inter alia, that the claims are barred by res judicata and the Rooker-Feldman doctrine. For the reasons that follow, Defendants' Motion to Dismiss, ECF No. 9, is GRANTED.

## I. BACKGROUND[1]

The Employees' Retirement System of the State of Rhode Island ("ERSRI") provides retirement benefits

[1] For the purposes of this decision, the factual allegations in Plaintiffs' Complaint are accepted as true. See Shay v. Walters, 702 F.3d 76, 79 (1st Cir. 2012) (citation omitted).

to various state and municipal employees in Rhode Island. See Compl. ¶¶ 27, 29, 30, ECF No. 1. Employees make mandatory contributions and receive benefits after retirement. See id. ¶¶ 29-31. Prior to 2011, retirees received a yearly, three-percent, compounded cost-of-living adjustment ("COLA"). Id. ¶ 32. Plaintiffs allege that the State had promised to pay this COLA for the rest of their lives. Id. ¶ 32.

In 2011, the Rhode Island General Assembly passed the Rhode Island Retirement Security Act ("RIRSA"). Compl. ¶ 39. RIRSA provided that, until ERSRI and other retirement funds reached eighty-percent funding (based on actuarial estimates of future revenue and liability), the fund would provide a COLA once every five years (instead of yearly). Id. ¶ 44. When eighty-percent funding was reached, retirees would receive a yearly non-compounded COLA, ranging between zero and four percent, applicable only to the first $25,000[2] of each retiree's yearly benefit. Id. ¶ 45; R.I. Gen. Laws § 36-10-35(g)(1).

Several lawsuits were filed. See R.I. Pub. Emples. Retiree Coal. v. Raimondo, No. PC 15-1468, 2015 WL 3648161, at *3-4 (R.I. Super. June 9, 2015) ("RIPERC II") (describing various actions).[3] One suit, the so-called

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[2] That maximum amount was subject to small increases over time. R.I. Gen. Laws Ann. § 36-10-35(g)(1).

[3] The Court will use the names "RIPERC I", "RIPERC II", and "RIPERC III" to refer to the Superior Court's decisions granting preliminary approval, final approval, and final judgment, respectively. Those three decisions were all part of the same proceeding.

Clifford case, was filed by a group that included all Plaintiffs here. See Fourth Am. Compl. at 4-22, Clifford v. Raimondo, No. KC 14-0345, (R.I. Super. Jan. 14, 2015) (filed here as ECF No. 10-1).[4] These suits claimed that RIRSA's COLA reductions violated the rights of ERSRI members under the Rhode Island Constitution. See id. at 38-42; RIPERC II, 2015 WL 3648161, at *3-4. A global settlement agreement was reached between many parties in the various actions (but not Plaintiffs here), and a class action complaint was filed for settlement purposes. See RIPERC II, 2015 WL 3648161, at *2.[5] The court certified the following class:

> All persons (and/or their beneficiaries) who, on or before July 1, 2015, are receiving benefits or are participating in the State Employees, Teachers, or Municipal Employees retirement systems administered by ERSRI

[4] See also Pls.' Opp'n 2, ECF No. 18 (discussing the Clifford case and its various complaints); Pls.' Sur-Reply 23, ECF No. 26 (referencing the original Clifford complaint).

[5] The Court may consider the state court decisions in the class action case. That class action is referenced and described in some detail in the Complaint, and purported deficiencies in that proceeding make up part of Plaintiffs' claims. See Compl. ¶¶ 46-53; see also In re Colonial Mortg. Bankers Corp., 324 F.3d 12, 16 (1st Cir. 2003) (looking to earlier proceeding for purposes of res judicata defense asserted in motion to dismiss where "the face of the complaint acknowledge[d] the existence of an earlier adversary proceeding"). Moreover, the settlement agreement and the term sheet used to summarize it are referenced throughout the Complaint and Plaintiff's briefing on the Motion to Dismiss. Compl. 38, 46, 48-53, 65, 68; Pls.' Opp'n 5-13, 16 n.7, 18-19, 30, 46-49; Pls.' Sur-Reply 2-5, 13-15, 18. These documents are thus "incorporated by reference in [the Complaint.]" In re Colonial Mortg. Bankers Corp., 324 F.3d at 20.

> and all future employees, excepting only those individuals who on July 1, 2015, are participating in a municipal retirement system administered by ERSRI for municipal police officers in any municipality and/or for fire personnel of the City of Cranston.

R.I. Pub. Emples. Retiree Coal. v. Raimondo, No. PC 15-1468, 2015 WL 1872189, at *2 (R.I. Super. April 16, 2015) ("RIPERC I"). Every Plaintiff here was a member of that class. See Compl. ¶ 1. Furthermore, because the class was certified pursuant to Rule 23(b)(2) of the Rhode Island Superior Court Rules of Civil Procedure, class members did not have the ability to opt out. RIPERC II, 2015 WL 3648161, at *14 (citing DeCesare v. Lincoln Benefit Life Co., 852 A.2d 474, 490 (R.I. 2004)). A condition precedent of the agreement was the passage by the Rhode Island General Assembly of legislation set out in the agreement. See Settlement Agreement 5, ECF No. 10-12, at 10. The Superior Court summarized the legislation as follows:

> A one-time COLA payment of 2% applied to the first $25,000 of the pension benefit and that amount added to the base benefit will be paid to retirees (or their beneficiaries) who participate in a COLA program and who retired on or before June 30, 2012 as soon as administratively reasonable following the passage of the legislation based on the amount of benefit payable on the effective date of the legislation.
>
> For funds that are not already funded, the settlement shortens the time intervals between

suspended COLA payments from once every five years to once every four years. The settlement also improves the COLA limitation for current retirees whose COLA is suspended. The settlement also requires a more favorable indexing of COLA Cap for all current and future retirees. The settlement also changes the COLA calculation to one more likely to produce a positive number and dictates that the COLA formula will be calculated annually, regardless of funding level, and when paid, the COLA will be compounded for all receiving a COLA.

Current retirees (or their beneficiaries) who have or will have retired on or before June 30, 2015 will receive two payments: (1) a one-time $500.00 stipend (not added to the COLA base) within sixty days of the enactment of the legislation approving the terms of the settlement and (2) a one-time $500 stipend payable one year later.

For State Workers, Teachers, and General MERS, the settlement (1) adds another calculation to reduce the minimum retirement age; (2) improves the available accrual rate for employees with twenty years or more of service as of June 30, 2012; (3) requires increased contributions by the employer to the Defined Contribution Plan for employees with ten or more years of service (but less than twenty) as of June 30, 2012; (4) waives the administration fee for any employees participating in the Defined Contribution Plan who make $35,000 or less; and (5) adds another

> calculation designed to limit the impact of the "anti-spiking" rule imposed by the RIRSA on part-time employees.
>
> For MERS Firefighters (excluding Cranston Firefighters), the settlement (1) lowers the age and service requirements for retirement; (2) increases the accrual rate for Firefighters who retire at age fifty-seven with thirty years of service.
>
> For State Correctional Officers, the settlement increases the accrual rate for correctional officers with fewer than twenty-five years of service as of June 30, 2012.
>
> The settlement reduces the impact of an early retirement.
>
> The settlement allows Municipalities to "reamortize"; that is, partially refinance, to be able to pay for the increased cost of the settlement.
>
> Otherwise, the terms of the RIRSA remain the same.

RIPERC I, 2015 WL 1872189, at *3-4. The agreement also provided that "each of the Parties covenant and agree that from and after the date hereof through and including final approval of the settlement and enactment of the Legislation and entry of judgment . . . [t]hey will not, directly or indirectly, propose, support, encourage or advocate for any legislative action concerning or relating to retirement benefits other than the adoption of the Legislation." Settlement Agreement 6, ECF No. 10-12, at 11.

The court held a five-day fairness hearing, during which many objections were presented. RIPERC II, 2015 WL 3648161, at *8-13. Following the hearing, the court rejected various contentions that the settlement was procedurally or substantively deficient. Id. at *13-31. The court approved the settlement, finding it to be "fair, adequate, and reasonable." Id. at *31. Shortly thereafter, the Rhode Island General Assembly passed the legislation contemplated by the settlement. See R.I. Public Laws 2015, art. 141, ch. 21. The court then entered judgment, stating:

> This Judgment is final and shall be binding on all parties and all class members in the above-referenced class action case for settlement purposes. Additionally, all class members are forever and completely barred from ever asserting any claims or causes of action that were alleged or brought or that could have been alleged or brought with respect to the various challenges to the Rhode Island pension statutes made and asserted in the above-captioned action and in each of the following matters, C.A. Nos. 10-2859, 12-3166, 12-3167, 12-3168, 12-3579, KC 14-0345, as the Court has previously found, determined and ruled that the terms and conditions of the Settlement Agreement, as now implemented and made effective by the Pension Legislation, are fair and reasonable.

R.I. Pub. Emples. Retiree Coal. v. Raimondo, No. PC 15-1468, 2015 WL 4501873, at *1 (R.I. Super. July 8, 2015) ("RIPERC III"). On the same date, the court also

entered the following judgment in the Clifford case: "The claims and defenses asserted herein having been foreclosed by the entry of Final Judgment entered in Rhode Island Public Employees' Retiree Coalition, et al. v. Raimondo, et al., CA. No. PC 15-1468, the complaint, as amended, is dismissed with prejudice." Final J., Clifford v. Raimondo, No. KC 14-0345 (R.I. Super. July 8, 2015) (filed here as ECF No. 10-9). Certain class members, including all Plaintiffs here, appealed both judgments to the Rhode Island Supreme Court. See Clifford v. Raimondo, 184 A.3d 673 (R.I. 2018); Joint Notice of Appeal at 1-3, R.I. Pub. Emples. Retiree Coal. v. Raimondo, No. PC 15-1468 (R.I. Super. July 27, 2015) (listing all Plaintiffs here) (filed here as ECF No. 10-111). In a consolidated opinion, the court affirmed the judgments in all respects, determining that the judge "did not abuse her discretion in concluding that the settlement was fair, reasonable, and adequate." Clifford, 184 A.3d at 695 (citation omitted).

Two years later, Plaintiffs filed their Complaint in this Court, and Defendants responded with the instant Motion to Dismiss.

## II. DISCUSSION

Plaintiffs' Complaint alleges violations of the following provisions of the United States Constitution: the Due Process Clauses of the Fifth and Fourteenth Amendments (Count I), the Contract Clause of Article

I, Section 10 (Count II),[6] the Takings Clause of the Fifth Amendment (Count III), and the First Amendment's guarantees of freedom of speech and the right to petition the government (Count V). Count IV, which is untitled, does not assert a separate cause of action and instead provides additional arguments to support Counts I, II, and III.[7] Therefore, Count IV will not be considered separately from those Counts.

First, Defendants argue that Counts I to IV are based on the same set of facts (concerning RIRSA's reduction of COLAs) that were the subject of the state

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[6] Count II states that it is brought pursuant to Article 5, Section 10, which does not exist. See Compl. 14. Plaintiffs clearly intended to refer to Article I, Section 10, as evidenced by the unattributed quotation from that section in paragraph 59 of the Complaint.

[7] Count IV first alleges that "[t]he implementation against the interests of the Plaintiffs of this pension law is directly violative of the Plaintiffs' rights and privileges under the United States Constitution." Compl. ¶ 66. More specifically, the Count states that the 2015 law "constitutes a new law . . . and was not the subject of the [Clifford case] or the onset or litigation of [the class action], but was the means to implement the Settlement Agreement." Compl. ¶ 65. This is Plaintiffs' exact argument for why Counts I to IV are distinct from the claims that were settled in the earlier cases. See Pls.' Opp'n 15-16. Second, the Count alleges that "Defendants have reasonable alternatives" to reducing Plaintiffs' COLAs. Compl. ¶ 67. To support this contention, paragraph 67 of the Complaint cites U.S. Tr. Co. of New York v. New Jersey, 431 U.S. 1, 31-32 (1977), in which the Supreme Court held that statutes that reduced the bond obligations of New Jersey and New York violated the Contract Clause, in part because less drastic alternatives were available to the states. Again, this is simply an argument in support of another count, not a separate claim for relief.

court class action, the Clifford action, and the Rhode Island Supreme Court decision, and are therefore barred by res judicata. Mot. to Dismiss 18-29. Second, Defendants contend that if the 2015 legislation is the basis for the lawsuit, Counts I to IV fail to allege an injury in fact because that legislation did not reduce Plaintiffs' pension benefits. Id. at 29-34. Third, Defendants maintain that, accepting Plaintiffs' dubious theory that the claims are based on the 2015 legislation (rather than RIRSA), all counts are barred by the Rooker-Feldman doctrine because they are an impermissible collateral attack on a final state court judgment. Id. at 34-38. The Court agrees with Defendants in all three respects and will therefore not address their other arguments for dismissal.

A. Res Judicata

Res judicata (i.e., claim preclusion) "is a valid defense to a later suit if (1) there is a final judgment on the merits of an earlier action, and (2) there is identity of the parties and (3) identity of the claims in both suits." Reppert v. Marvin Lumber and Cedar Co., 359 F.3d 53, 56 (1st Cir. 2004) (citation omitted). This affirmative defense may be asserted in a motion to dismiss for failure to state claim. In re Colonial Mortg. Bankers Corp., 324 F.3d 12, 16 (1st Cir. 2003) (citing Boateng v. InterAmerican Univ., Inc., 210 F.3d 56, 60 (1st Cir. 2000)). However, a defendant can prevail at this embryonic stage only if the facts supporting preclusion are "definitively ascertainable from the allegations of the complaint, the documents (if any)

incorporated therein, matters of public record, and other matters of which the court may take judicial notice." In re Colonial Mortg. Bankers, 324 F.3d at 16. "[A] court ordinarily may treat documents from prior state court adjudications as public records." Boateng, 210 F.3d at 60 (citing Henson v. CSC Credit Servs., 29 F.3d 280, 284 (7th Cir. 1994)). Moreover, the facts contained within these sources "must conclusively establish the affirmative defense." In re Colonial Mortg. Bankers, 324 F.3d at 16 (citation omitted).

i. Final Judgment on the Merits of an Earlier Action

Class action settlement agreements may form the basis for preclusion. Reppert, 359 F.3d at 56; see also Matsushita Elec. Indus. Co. v. Epstein, 516 U.S. 367, 379 (1996) ("There is of course no dispute that under elementary principles of prior adjudication a judgment in a properly entertained class action is binding on class members in any subsequent litigation." (citation and quotations omitted)). Here, the Rhode Island Superior Court entered judgment in the class action and the Clifford case. RIPERC III, 2015 WL 4501873, at *1; Final J., Clifford v. Raimondo, No. KC 14-0345 (R.I. Super. July 8, 2015). The Rhode Island Supreme Court affirmed, and Plaintiffs did not petition the United States Supreme Court for a writ of certiorari. See Clifford, 184 A.3d at 695. Thus, there was a final judgment on the merits.

Plaintiffs seem to argue that the settlement proceedings violated procedural due process and that the terms of the agreement violated substantive due process, so the Superior Court erred in certifying the class and approving the agreement. See Pls.' Opp'n 31, ECF No. 18 ("Whether looked at from a substantive or procedural due process posture it is the case, that the State Defendants have reasonable alternatives which they have acknowledge [sic] in public for all the world to see and indeed endorse and fund."). But the state courts' decisions to approve the settlement are themselves protected by res judicata. See In re Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Products Liab. Litig., 431 F.3d 141, 146 (3d Cir. 2005) ("Once a court has decided that the due process protections did occur for a particular class member or group of class members, the issue may not be relitigated."). The same is true for the certification of the class, which included Plaintiffs. See Ticor Title Ins. Co. v. Brown, 511 U.S. 117, 121 (1994) ("It was conclusively determined in the [prior] litigation that respondents' class fit within Rules 23(b)(1)(A) and (b)(2); even though that determination may have been wrong, it is conclusive upon these parties. . . ."); Juris v. Inamed Corp., 685 F.3d 1294, 1335 (11th Cir. 2012).[8] Therefore, Plaintiffs cannot escape preclusion by arguing that the

[8] For this reason, Plaintiffs' reliance on Amchem Products, Inc. v. Windsor, 521 U.S. 591, 625 (1997), in which the Supreme Court reversed a district court's decision to certify a class, is misplaced. See Pls.' Opp'n 28-29.

settlement should not have been approved or that they should have been allowed to opt out.[9]

Nonetheless, Plaintiffs attempt to do exactly that, pointing repeatedly to Andrews v. Lombardi, 231 A.3d 1108 (R.I. 2020). See Pls.' Opp'n 11, 12 n.6, 22, 32-36, 42-43, 46, 51; Pls.' Sur-Reply 24-25, ECF No. 26. In Andrews, Providence firefighters and police officers challenged a city ordinance that suspended their COLAs until the pension fund was seventy percent funded. 231 A.3d at 1113. At summary judgment and following a bench trial, the Superior Court decided the constitutional claims in the defendants' favor. Id. The Rhode Island Supreme Court disagreed on the merits of the claims brought pursuant to the Contract Clauses of the United States and Rhode Island Constitutions, holding that the Superior Court "erred in finding that the length of time of the COLA suspension was reasonable and necessary to fulfill an important public purpose." Id. at 1126.

Plaintiffs do not explain how Andrews is relevant to the instant questions of res judicata and the Rooker-Feldman doctrine. Instead, Plaintiffs simply argue that since the plaintiffs in Andrews won, and since there are factual similarities between this case and that one, Plaintiffs here should win too. See Pls.' Opp'n 36 ("The Andrews Court found the contractual right was unfairly interfered with and remanded the case.

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[9] Moreover, as discussed below, under the Rooker-Feldman doctrine this Court lacks authority to evaluate the merits of those state court determinations.

No less a result can occur here."). Indeed, were this Court evaluating the merits of the underlying constitutional claims, Andrews might assist Plaintiffs. But the Court cannot reach the merits without first dealing with the obstacles of the prior actions.

From a related angle, Plaintiffs might be arguing that Andrews bolsters their underlying constitutional claims to such a degree that the settlement agreement, by providing piddling relief in response to RIRSA's devastating cuts, could not have been fair or reasonable. But, as explained, the fairness, adequacy, and reasonableness of the settlement are not for this Court to decide. Thus, Plaintiffs cannot sidestep res judicata by attacking the validity of the settlement. The first requirement – a final judgment on the merits in a previous action – is met.

ii. Identity of the Parties

The second requirement of res judicata is identicality of the parties. All 49 Plaintiffs here, along with the three Defendants, were parties to the Clifford case that was consolidated with the class action. Fourth Am. Compl. at 4-22, Clifford v. Raimondo, No. KC 14-0345, (R.I. Super. Jan. 14, 2015). All 49 Plaintiffs were members of the class certified in the class action, see Compl. ¶ 1, and Defendants here were the defendants there. See Compl. at ¶¶ 28-30, R.I. Pub. Emples. Retiree Coal. v. Raimondo, No. PC 15-1468 (R.I. Super. April 13, 2015) (filed here as ECF No. 10-10). All 49 Plaintiffs appealed the judgments in those cases to the

Rhode Island Supreme Court. See Joint Notice of Appeal at 1-3, R.I. Pub. Emples. Retiree Coal. v. Raimondo, No. PC 15-1468 (R.I. Super. July 27, 2015) (filed here as ECF No. 10-111). Therefore, identicality of the parties is satisfied.

iii. Identity of the Claims

The third requirement is that the subject matter of the prior litigation and the current litigation be sufficiently similar. The level of similarity that is required comes from Rhode Island law because, "[u]nder federal law, a state court judgment receives the same preclusive effect as it would receive under the law of the state in which it was rendered." Dillon v. Select Portfolio Servicing, 630 F.3d 75, 80 (1st Cir. 2011) (citation omitted); accord Migra v. Warren City Sch. Dist. Bd. of Educ., 465 U.S. 75, 81 (1984). In Rhode Island, a final judgment extinguishes "all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose." Plunkett v. State, 869 A.2d 1185, 1188 (R.I. 2005) (quoting Restatement (Second) Judgments, § 24) (emphasis removed). The definitions of "transaction" and "series" "are to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage." Id. at 1189 (quoting Restatement (Second) Judgments, § 24) (emphasis removed).

In the Clifford case, which was consolidated into the class action, the plaintiffs claimed that RIRSA unlawfully reduced retirees' pension benefits by denying them yearly, compounded, three-percent COLAs. See Fourth Am. Compl. at ¶¶ 631-644, Clifford v. Raimondo, No. KC 14-0345 (R.I. Super. Jan. 14, 2015). The plaintiffs argued, inter alia, that RIRSA violated the Contract Clause, Takings Clause, and due process provisions of the Rhode Island Constitution. Id. ¶¶ 649-672. Clearly, if Plaintiffs' claims here are based on the fact that RIRSA reduced their COLAs, their claims arose out of the same transaction as the claims in the prior action.

In an attempt to escape the inevitable, Plaintiffs argue that their claims do not concern RIRSA, but rather the 2015 legislation spawned by the settlement agreement. See, e.g., Compl. ¶¶ 22-26, 65; Pls.' Opp'n 1, 15-16. However, Plaintiffs' filings belie this contention. The illusory nature of their reliance on the 2015 legislation is well-summarized by the following passage from their Opposition: "It is stark and unsupported assertion raised by the Defendant's [sic] to assert that the 2015 [sic] provides greater benefits than those striped [sic] away including unspecified host of other retirement benefits. The fact is that the small payments made as part of the settlement failed to remotely compensate for the losses they were and continue to suffer as a result." Pls.' Opp'n 10-11. The same theory is articulated in Plaintiffs' Sur-Reply: "The concept that the 2015 law only resulted in improved benefits is not born out by any fair reading of

the statute. The statute fails to restore to the Plaintiffs the COLA in the same compounded manner upon which they based their decision to retire." Pls.' Sur-Reply 23. In other words, RIRSA caused a constitutional harm by taking away Plaintiffs' pension benefits, and because the 2015 legislation restored their lost benefits only in small part, the 2015 legislation inflicted a second and separate injury to Plaintiffs. But if the harmful attribute of the 2015 legislation is that it did not fix the injury caused by RIRSA, that is not a separate cause of action. It is merely a reframing of Plaintiffs' RIRSA-based claims.

A plethora of examples from the Complaint make clear that the injuries at issue were caused prior to the 2015 law. See Compl. ¶ 1 ("The pension each Plaintiff was to receive in the time leading up to their decision to leave public service included a cost-of-living adjustment ("COLA") of 3%. . . ."); id. ¶ 32 ("State law provided and the State promised all of the Plaintiffs, upon retirement, a three-percent compounded cost-of-living retirement adjustment. . . ."); id. ¶ 36 ("The Defendants did not, upon or at any time prior to the Plaintiffs' retirement, represent to the Plaintiffs that their respective Allowances and/or COLAs could or would ever be reduced, suspended or eliminated. . . ."); id. ¶ 37 ("Defendants, by and through their employees and/or agents, calculated the projected COLA-adjusted pension payments retirees could expect to receive as part of the retirement process."); id. ¶ 42 ("The suspension of the Plaintiffs' receipt of the COLAs, pursuant to RIRSA, has substantially diminished, and continues

to substantially diminish, the amount of the Plaintiffs' respective Allowances."); id. ¶ 55 ("Each of the Plaintiffs entered into an agreement with the State with respect to the State's provision of a mandatory, contributory and defined-benefit pension plan and/or benefits, including, without limitation, the Allowance and COLA, to each of the Plaintiffs, in exchange for Plaintiff's respective performance of certain duties. . . . "); id. ¶ 56 ("The State breached the terms and conditions of the Agreement, including . . . those terms and conditions requiring the provision of a . . . COLA. . . .").

Moreover, the remedy sought by Plaintiffs is the reinstatement of the pension benefits and COLAs that were expected pre-RIRSA, along with compensatory damages for some or all of the years in which Plaintiffs have not received those full amounts. See Compl. 17 (praying that the Court "[d]eclare that Defendants' policies and practices implementing the legislation denying cost of living raises violates" due process, the Contract Clause, and the Takings Clause); Compl. 18 (praying that the Court "[t]emporarily, preliminarily and permanently enjoin Defendants from implementing the legislation identified herein denying Plaintiffs' cost of living increases in their pensions and honor the commitments made to the Plaintiffs prior to their retirements" and that the Court "[a]ward Plaintiffs compensatory damages for all prior periods affected by the implementation of 2015 Public laws of Rhode Island 141, Article 21, as the same existed at the time of the Plaintiffs' retirement"). These passages indicate that RIRSA is the basis for this case.

Plaintiffs thus try a slightly modified tack, arguing that the intervening event of the 2015 enactment was a rupture in the continuum of pension benefits and pension litigation such that their claims were somehow born anew. See Pls.' Opp'n 15-22. To support this contention, Plaintiffs rely on the Supreme Court's decision in Whole Woman's Health v. Hellerstedt, 136 S. Ct. 2292 (2016), as revised (June 27, 2016). The plaintiffs in Whole Woman's Health had previously challenged a Texas abortion restriction before the law went into effect. See 136 S. Ct. at 2300. They had lost because the Fifth Circuit determined that "[a]ll of the major Texas cities [would] continue to have multiple clinics where many physicians w[ould] have or obtain hospital admitting privileges. . . ." Id. at 2306 (citation and quotations omitted)). After the law went into effect, the plaintiffs sued once more, and the parties stipulated that the restrictions would lead to the closure of all but seven or eight clinics statewide. Id. at 2316. The Supreme Court noted that while the first action was a "facial challenge to the [law] prior to its enforcement – before many abortion clinics had closed and while it was still unclear how many clinics would be affected" - the second action was "an as-applied challenge to the requirement after its enforcement – and after a large number of clinics ha[d] in fact closed." Id. at 2306. Based on this intervening change in circumstances, the Court ruled that the second action was not barred by res judicata. Id.

But while the constitutional claims in Whole Woman's Health were strengthened by the change

in the factual landscape, here, the 2015 legislation amounted to a partial restoration of Plaintiffs' benefits, thus weakening Plaintiffs' constitutional claims. As such, Whole Woman's Health gives no assistance to Plaintiffs.[10] [11]

For the purposes of this Motion, the Court fully accepts Plaintiffs' allegations that they were promised COLAs and that Defendants broke this promise. See Compl. ¶¶ 32, 42-43. Moreover, the Court does not doubt that the reduction in pension benefits has significantly impacted Plaintiffs' lives. But their opportunity to challenge the reduction in benefits caused by RIRSA "came and went" with the state court class action and subsequent appeal. See Plunkett, 869 A.2d at 1189. Plaintiffs' attempt to rest their claims on the 2015 legislation is merely a sleight of hand. Thus, Counts I to IV are barred by res judicata.

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[10] In a similar, and equally futile argument, Plaintiffs seem to say that the 2015 legislation did two things: first, it repealed RIRSA, momentarily restoring the state of affairs prior to 2011, and second, it imposed new restrictions on pension benefits, thus robbing Plaintiffs of their briefly reincarnated COLAs. See Pls.' Sur-Reply 11 n.1. Whether or not RIRSA was repealed from a technical perspective, from a practical perspective Plaintiffs received more money after the 2015 legislation than they would have absent the legislation.

[11] Plaintiffs also raise a rather inscrutable argument suggesting that a challenge based on RIRSA would be moot, and Plaintiffs must therefore be permitted to challenge the 2015 legislation instead. See Pls.' Opp'n 30 (citing Gulf of Maine Fisherman's All. v. Daley, 292 F.3d 84, 88 (1st Cir. 2002)). This argument lacks merit.

B. Injury in Fact

Defendants next insist that, were this Court to accept Plaintiffs' implausible theory that Counts I to IV are based on the 2015 legislation (and not RIRSA), those claims would fail to state an injury in fact. See Mot. to Dismiss 29-34. To establish standing under Article III, a plaintiff must plausibly plead an injury that is "both concrete and particularized and actual or imminent, not conjectural or hypothetical." Hochendoner v. Genzyme Corp., 823 F.3d 724, 731 (1st Cir. 2016) (citations and quotations omitted). Where injury in fact is lacking, there is no federal court jurisdiction. Id. at 736. In conducting this inquiry, the Court "takes all well-pleaded facts in the complaint as true and indulge[s] all reasonable inferences in [Plaintiffs'] favor to determine whether [they] plausibly pleaded facts necessary to demonstrate standing to bring the action." Dantzler, Inc. v. Empresas Berrios Inventory and Operations, Inc., 958 F.3d 38, 46-47 (1st Cir. 2020) (quotations and citations omitted).

RIRSA reduced Plaintiffs' pension benefits. See Compl. ¶¶ 39-45. Despite the outcries of pension plan members, the class action settlement agreement and resulting legislation largely left those cuts in place. However, the agreement led to a one-time, two-percent COLA, see R.I. Gen. Laws § 36-10-35(h)(1)(A), two 500-dollar payments to retirees, see id. § 36-10-35(i), and, for members of pension plans with less than eighty-percent funding, the provision of COLAs every fourth year instead of every fifth. See id. § 36-10-35(h)(3). To Plaintiffs, these small benefits, in comparison to the

significant cuts imposed by RIRSA, may have added insult to injury. But the fact remains that the 2015 legislation gave them more money, not less. Therefore, it is difficult to see how the law harmed them.

Plaintiffs posit that they were injured because the term sheet provided to class members as an explanation of the then-unfinalized settlement agreement did not describe certain aspects of the agreement that gave discretion to government officials in determining COLA percentages and setting funding policies (thus affecting when eighty-percent funding was achieved). See Compl. ¶¶ 38, 53; Pls.' Opp'n 47-48. Plaintiffs reason that this discretion allows the state to underfund ERSRI, thus delaying the provision of yearly COLAs. See Sur-Reply 5.

Specifically, Plaintiffs allege that three details were absent from the term sheet. See Compl. ¶¶ 38, 53. First, the term sheet stated that the COLA would be calculated based on a five-year average investment return of the pension fund but did not specify that the five-year average would be derived from the investment returns as determined by the retirement board. Compare Outline of Terms for Settlement Agreement ¶ I(B)(4), ECF No. 10-12, at 73 ("COLA Formula [is] calculated using previous 5 year average") with R.I. Gen. Laws § 36-10-35(h)(1)(B) ("The 'five-year average investment return' shall mean the average of the investment returns of the most recent five (5) plan years as determined by the retirement board."). Second, Plaintiffs complain that the definition of "Funded

Ratio",[12] which was made "subject to the 'funding policy' of the Retirement Board as defined in § 36-8-4," was similarly not described in the term sheet.[13] See R.I. Gen. Laws § 36-8-1(11). Importantly, these changes were included in the settlement agreement. See Proposed Act 4, Ex. C to Settlement Agreement, ECF No. 10-12, at 81 ("'Funded Ratio' shall mean the ratio of the actuarial value of assets to the actuarial accrued liability consistent with the funding policy of the retirement board as defined in § 36-8-4."); id. at 15, ECF No. 10-12, at 94 ("The 'Five-Year Average Investment Return' shall mean the average of the investment returns of the most recent five (5) plan years as determined by the retirement board.").

Of course, a "term sheet", designed to condense a lengthy settlement agreement into an easily understood format, will inevitably leave out various details of the full agreement. That is the point. But, even if Plaintiffs are right, and the missing details they highlight warranted inclusion in the term sheet, this flaw is relevant only to the Superior Court's determination, as affirmed by the Rhode Island Supreme Court, that

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[12] Plaintiffs use the term "Funded Rate", see Compl. ¶¶ 21, 53, but the correct term is "Funded Ratio". See R.I. Gen. Laws § 36-8-1(11).

[13] In their Opposition, Plaintiffs assert that this definition not only was absent from the term sheet, but was missing from the settlement agreement entirely. See Pls.' Opp'n 19. This assertion is incorrect. The definition did appear in the settlement agreement, identical to the text of the current law. See R.I. Gen. Laws § 36-8-1(11); Proposed Act 4, Ex. C to Settlement Agreement, ECF No. 10-12, at 81.

the settlement process did not violate the due process rights of the class members. This Court cannot review those determinations.

The third purported deficiency of the term sheet is that it did not state that the following language would be stricken from Rhode Island General Laws § 35-6-1:

> Upon issuance of the audited financial statement, the controller shall transfer all general revenues received in the completed fiscal year, net of transfer to state budget reserve and cash stabilization account as required by § 35-3-20, in excess of those estimates adopted for that year as contained in the final enacted budget to the employees' retirement system of the State of Rhode Island as defined in § 36-8-2.

See Compl. ¶ 38. However, as Defendants point out, that change was not part of the settlement agreement and therefore would not have been included in the term sheet. See Mot. to Dismiss 34 n.10. Nor was that deletion part of the legislation that resulted from the settlement – Rhode Island Public Laws chapter 141, article 21. Rather, it was part of Rhode Island Public Laws chapter 141, article 13, § 2. Moreover, the Complaint makes no contention that the change to § 35-6-1 violated the terms of the settlement.[14] Thus, § 35-6-1 provides no support to Plaintiffs' arguments.

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[14] In a sign that Plaintiffs may have recognized the deficiency of this argument, Plaintiffs' briefing on the Motion to Dismiss contains no reference to § 35-6-1. See Pls.' Opp'n; Pls.' Sur-Reply.

More broadly, Plaintiffs bemoan the fact that the settlement agreement and implementing legislation gave discretion to the government regarding the degree to which money was channeled into the pension funds. See Pls.' Opp'n 19-22; Compl. ¶¶ 60-63. Plaintiffs argue persuasively that, because yearly COLAs will not occur until the pension plans achieve eighty-percent funding, Plaintiffs are unjustly subjected to the whims of those determining fiscal policy for the state. See Pls.' Opp'n 22; Compl. ¶¶ 60-63. However, by criticizing this discretion, Plaintiffs are simply arguing that the settlement agreement was not fair. As explained, this Court has no power to re-adjudicate the propriety of the settlement.

Lastly, Plaintiffs offer an actuarial chart that allegedly shows that they have suffered monetary losses due to the 2015 legislation. See Pls.' Opp'n 48 (citing Sherman Letter, ECF No. 18-1). This chart purports to calculate "the difference between what was paid to [a hypothetical average retiree] versus what would have been paid but for the curtailment of the pension payments under the Retirement Reform Legislation." Sherman Letter 1, ECF No. 18-1. While the letter containing this chart does not define "Retirement Reform Legislation", the letter makes clear that the chart compares the hypothetical payments a retiree would have received had neither RIRSA nor the 2015 legislation been passed to the actual payments that were paid under the enacted legislation. In other words, the letter illustrates that RIRSA resulted in dramatically reduced payments, a proposition undisputed by Defendants and

irrelevant to the question of whether the 2015 legislation caused an injury. The letter goes on to say that "the special payments received do not make up [the] difference [caused by the curtailment of COLAs,]" id., thus acknowledging that the 2015 legislation provided modest benefits to retirees.

In sum, were the Court to accept Plaintiffs' argument that Counts I to IV are brought based on the 2015 legislation, those counts would fail to allege an injury in fact, and this court would lack Article III jurisdiction.

C. Rooker-Feldman

Even if Counts I to IV were based on the 2015 legislation, and even if Plaintiffs had plausibly alleged that the 2015 legislation had injured them, this Court would lack jurisdiction over those counts under the Rooker-Feldman doctrine. That doctrine also bars this Court from exerting jurisdiction over Count V, which alleges that a covenant in the class action settlement agreement unconstitutionally prohibited Plaintiffs from petitioning the government for changes to the 2015 legislation prior to its passage. See Compl. ¶ 68; Pls.' Opp'n 46-47.

The Rooker-Feldman doctrine bars federal district courts from entertaining "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." Exxon Mobil Corp. v.

Saudi Basic Industries Corp., 544 U.S. 280, 283-84 (2005) (citing Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923), and D.C. Ct. of Appeals v. Feldman, 460 U.S. 462 (1983)). Such cases fall beyond a district court's subject-matter jurisdiction because, under 28 U.S.C. § 1257, the Supreme Court is the only federal court with the power to reverse or modify state court judgments.[15] Exxon Mobil, 544 U.S. at 292. The doctrine does not apply "unless, inter alia, the federal plaintiff seeks redress of an injury caused by an allegedly erroneous state court decision; if the plaintiff alleges a constitutional violation by an adverse party independent of the injury caused by the state court judgment, the doctrine does not bar jurisdiction." Davison v. Gov't of Puerto Rico-Puerto Rico Firefighters Corps., 471 F.3d 220, 222-23 (1st Cir. 2006) (citing Exxon Mobil, 544 U.S. at 284). As with any motion to dismiss for lack of subject matter jurisdiction, the Court "accept[s] the [P]laintiffs' well-pleaded facts as true and indulg[es] all reasonable inferences" in their favor. Id. at 222 (quoting McCloskey v. Mueller, 446 F.3d 262, 266 (1st Cir. 2006)).

Here, the Rhode Island Superior Court certified a class of plaintiffs, approved a settlement agreement that disposed of constitutional challenges to RIRSA (including Plaintiffs'), and overruled various objections. A condition precedent of the settlement agreement was that the General Assembly would enact certain legislation, the provisions of which Plaintiffs

[15] This rule has certain exceptions, such as federal habeas review of state court criminal convictions.

now protest. The purportedly unconstitutional sections identified in the Complaint were contained verbatim in the settlement agreement. See Compl. ¶¶ 21-25; Proposed Act 4, 16-18, 31-32, 43-45, Ex. C to Settlement Agreement, ECF No. 10-12, at 81, 93-95, 108-09, 120-122. Were this Court to assess the constitutionality of the 2015 law vis-à-vis these Plaintiffs, this Court would be reviewing the decisions of the Rhode Island Supreme Court and Superior Court, precisely that which is forbidden under Rooker-Feldman.[16]

This prohibition applies even to Count V, which alleges that a covenant in the settlement agreement forbade Plaintiffs from lobbying the General Assembly while the 2015 legislation was pending, thus violating the First Amendment. See Compl. ¶ 68.[17] The First Amendment issue was not discussed in the decisions from the Rhode Island Supreme Court and Superior

[16] Plaintiffs state that Massachusetts v. Wampanoag Tribe of Gay Head, 36 F. Supp. 3d 229 (D. Mass. 2014), "by inference . . . endorses federal jurisdiction with respect to a federal statute arising from a later enacted statute." Pls' Opp'n 38. That decision addressed whether there was a federal question; neither res judicata nor the Rooker-Feldman doctrine were at issue. See Wampanoag Tribe of Gay Head, 36 F. Supp. 3d at 232-37. Moreover, the cause of action in that case was triggered by a plethora of events that had occurred in the three decades since the settlement agreement was formed. Id. at 231-32. Here, as explained, Plaintiffs have not identified a single intervening event that comes anywhere close to establishing a cause of action. Thus, the Court cannot identify any inferences helpful to Plaintiffs in the holding or reasoning of Wampanoag Tribe of Gay Head.

[17] It is not clear to the Court whether the covenant did in fact apply to Plaintiffs, who were not parties to the settlement agreement. See Settlement Agreement, Ex. A, ECF No. 10-12, at 58-71.

Court; seemingly, the objection was not raised, or at least not emphasized. See Clifford, 184 A.3d 673; RIPERC II, 2015 WL 3648161. Nonetheless, the Rhode Island Superior Court entered judgment, ordering all members of the class to comply with the terms of the agreement. RIPERC III, 2015 WL 4501873, at *1. The Rhode Island Supreme Court affirmed that judgment. Clifford, 184 A.3d at 695. Plaintiffs now ask this Court to hold that the covenant unconstitutionally restricted their right to petition the government. See Compl. 18. In other words, Plaintiffs "seek[] redress of an injury caused by an allegedly erroneous state court decision. . . ." Davison, 471 F.3d at 222.

This is not to say that once the Rhode Island Supreme Court has spoken on an issue this Court is forever barred from addressing the topic. For example, were Plaintiffs to allege that an ongoing speech restriction in a settlement agreement was unconstitutional with regards to specific actions that Plaintiffs wished to take, a different result might obtain. In that hypothetical situation, this Court would be faced with factual circumstances that were not before the state courts. Thus, this Court could potentially reach the merits of the claim without impermissibly reviewing the state court decisions. Here, conversely, Plaintiffs have brought an abstract First Amendment challenge, seeking a broad declaration that the covenant was unconstitutional. See Compl. 17-18. Entertaining the merits of that claim would inherently involve reviewing the state court judgments that approved the

settlement agreement. Thus, this Court lacks jurisdiction over Count V.[18]

## III. Conclusion

For the reasons contained herein, Defendant's Motion to Dismiss, ECF No. 9, is GRANTED, and Plaintiffs' Complaint, ECF No. 1, is DISMISSED.

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[18] The Court reaches no conclusions regarding the substantive merits of the First Amendment challenge. To the extent that a court-enforced settlement agreement between state actors and private individuals restricts the First Amendment rights of class members who objected to that settlement, serious constitutional concerns are implicated. See Overbey v. Mayor of Baltimore, 930 F.3d 215, 220, 222 (4th Cir. 2019) (holding that "strong public interests rooted in the First Amendment" rendered a non-disparagement clause in a settlement agreement from a prior police misconduct lawsuit "unenforceable and void"); Democratic Nat. Comm. v. Republican Nat. Comm., 673 F.3d 192, 204-05 (3d Cir. 2012) ("[C]ourts must 'indulge every reasonable presumption against waiver of fundamental constitutional rights.'" (quoting Johnson v. Zerbst, 304 U.S. 458, 464 (1938)); Davies v. Grossmont Union High Sch. Dist., 930 F.2d 1390, 1399-1400 (9th Cir. 1991) (holding that provision of settlement agreement between school district and plaintiff barring plaintiff from running for school board was void where school district "failed to advance a public interest in enforcement of [the] waiver of [plaintiff's] right to seek and hold office sufficient to outweigh the public's interest in maintaining the full and fair right to vote").

IT IS SO ORDERED.

/s/ William E Smith
William E. Smith
District Judge
Date: April 15, 2021

**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF RHODE ISLAND**

BINYAMIN I. EFREOM, et al.,
Plaintiffs,

v. C.A. No. 20-122 WES

DANIEL J. McKEE, in his capacity as Governor of Rhode Island, et al.,
Defendants.

**JUDGMENT**

(Filed Apr. 15, 2021)

[ ] Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

[ X ] Decision by the Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED:

Judgment hereby enters pursuant to the Memorandum and Order entered on April 15th, 2021 by this Court.

Enter:

/s/ Ryan H. Jackson

Deputy Clerk

Dated: April 15th, 2021