

ATTEST: A TRUE COPY

*Joey D. Maya*

Chief Clerk of the Supreme Court  
of the State of New Mexico

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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

September 10, 2013

NO. 34,210

JOANNA BARTLETT, LENORE PARDEE,  
DAVID HAMILTON, and BETH LEHMAN,

Petitioners,

v.

MARY LOU CAMERON, RUSSELL GOFF,  
DELMAM SHIRLEY, BRADLEY DAY, HANA  
SKANDERA, JAMES B. LEWIS, and J. THOMAS MCGUCKIN,  
in their official capacities as Board of Trustees of the New Mexico  
Education Retirement Board, and JAN GOODWIN, in her official  
capacity as Executive Director of the New Mexico Education Retirement  
Board,

Respondents.

ORDER

WHEREAS, this matter came on for consideration upon an emergency  
petition for writ of mandamus, response thereto, amicus brief of AFSCME  
Council 18 in support of respondents, and oral argument of the parties on  
September 4, 2013;

WHEREAS, after oral argument, this Court took the matter under  
advisement pending further order of the Court; and

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WHEREAS, in light of the foregoing, and upon the Court's own motion to request supplemental briefing, Chief Justice Petra Jimenez Maes, Justice Richard C. Bosson, Justice Edward L. Chávez, Justice Charles W. Daniels, and Justice Barbara J. Vigil concurring;

NOW, THEREFORE, IT IS ORDERED that the parties shall file simultaneous, supplemental briefs on or before **Tuesday, September 24, 2013**, that address the following questions:

1. For those persons who have actually retired under the ERA, whether the prospective annual cost of living adjustment (COLA) is considered to be benefits, and if so, when do the adjustments vest?
2. Whether the takings at issue are to be analyzed as a regulatory taking or a taking per se?
3. If the COLA is a taking per se, whether improving the actuarial soundness is just compensation?
4. If the COLA does not vest until the following "year," whether the taking, if any, is regulatory or per se?
5. If the COLA adjustments have varied from time to time during the years between an employee's date of meeting the minimum service requirements and date of retirement, which COLA adjustment percentage, if any, is the retiree guaranteed to receive every year after retirement and why is that particular adjustment guaranteed?
6. Please research and describe the history of the COLA for the ERA and the PERA as it has evolved over the years. Assuming it has changed over time, what is the authority that entitles a government retiree to the same COLA in perpetuity without any further "adjustments" over time as the

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name implies? Cite and discuss all case law on point pro and con, including recent opinions, in jurisdictions across the country regarding government retirement plans;

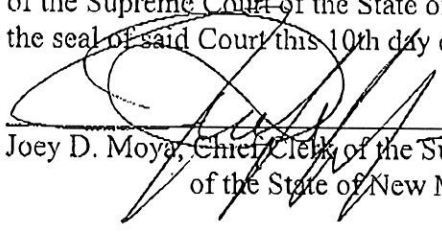
IT IS FURTHER ORDERED that a supplemental amicus brief is not required but may be filed at the discretion of amicus curiae AFSCME Council 18; and

IT IS FURTHER ORDERED that the length limitations for a petition filed under Rule 12-504(G) NMRA shall apply to any supplemental briefs filed pursuant to this order.

IT IS SO ORDERED.

WITNESS, Honorable Petra Jimenez Maes, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 10th day of September, 2013.

(SEAL)

  
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Joey D. Moya, Chief Clerk of the Supreme Court  
of the State of New Mexico