

IN THE
Supreme Court of the United States

NEW JERSEY EDUCATION ASSOCIATION,
COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO,
AND NEW JERSEY STATE POLICEMEN'S
BENEVOLENT ASSOCIATION, *et al.*,
Petitioners,

v.

STATE OF NEW JERSEY, *et al.*,
Respondents.

**On Petition for a Writ of Certiorari
to the Supreme Court of New Jersey**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This Court held in *U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1 (1977), and *Anderson ex rel. Brand v. Indiana*, 303 U.S. 95 (1938), that a statute constitutes a contract when the language and circumstances evince a legislative intent to create private rights of a contractual nature, and that the federal Contract Clause limits the power of the States to modify or disregard their own contracts. In New Jersey, the Legislature and Governor enacted a law that expressly created a contractual right in its public pension system participants to requisite annual payments to the pension funds from the State. After several years of compliance, the State reneged on its contractual obligation to make the requisite payment. Acceding to this failure to pay, the Supreme Court of New Jersey decided that the legislative and executive branches did not have the authority to create a contractual right even by clear and unmistakable language, thereby precluding the application and protection of the federal Contract Clause to the participants in the pension systems.

1. Did the New Jersey Supreme Court fail to enforce Article I, Section 10 of the United States Constitution by holding that the legislative and executive branches lacked the authority to form a binding fiscal contract and by permitting a subsequent legislature to repudiate clear and unmistakable contractual commitments made by a prior legislature?

**PARTIES TO THE PROCEEDINGS
AND RULE 29.6 STATEMENT**

Petitioners, who were Plaintiffs-Respondents in the Court below, are New Jersey Education Association; Communications Workers of America, AFL-CIO; New Jersey State Policemen's Benevolent Association, Inc.; Professional Firefighters Association of New Jersey, IAFF, AFL-CIO; New Jersey Fraternal Order of Police; American Federation of State, County, and Municipal Employees, Council 73; American Federation of Teachers New Jersey State Federation, AFL-CIO; International Federation of Professional and Technical Engineers, AFL-CIO & CLC, Local 195; Health Professional and Allied Employees, AFT, AFL-CIO; New Jersey State AFL-CIO; New Jersey State Firefighters' Mutual Benevolent Association; Newark Firefighters Union, Inc.; American Federation of State, County, and Municipal Employees, Council 1, AFL-CIO; New Jersey Principals and Supervisors Association; Probation Association of New Jersey, Professional Case-Related Unit; Probation Association of New Jersey, Professional Supervisors Union; Sandra P. Cohen; Michael A. Justiniano; Dominick Marino; Donna Chiera; Diane Cameron; Russell Leak; Christine Sampson-Clark; Heidi Olsen; Patricia Provnick; Keith Dunn; Patrick Colligan; Marc Kovar; Tim Duetsch; Kyle Hughes; John E. Murphy, Jr.; James Willis; Lance P. Lopez, Sr.; Janet S. Zymroz; John C. Alfieri, Jr.; Hope Grant; Rosario Capaccio; Dwight Covalleskie; Gavin Cummings; and Ellen Cribbin (hereinafter, "Petitioners").

The entity petitioners are each labor organizations and professional organizations representing hundreds of thousands of present and former New Jer-

sey public employees who are members of one or more of its pension systems, including people currently working and contributing toward their pensions, and those retired and receiving a pension. The individual petitioners are members and officers of those organizations, as well as participants in the pension systems as active or retired employees.

None of the entity petitioners are publicly traded corporations or issue any stock. There is no publicly held corporation with more than a 10% interest in the entity petitioners.

Christopher Burgos, James Kiernan, Stephen Sternik, the State Troopers Fraternal Association of New Jersey, the State Troopers Non-Commissioned Officers of New Jersey, Inc., and the State Troopers Superior Officers Association of New Jersey, who were also Plaintiffs-Respondents in the Court below, have filed a separate petition for certiorari seeking review of the same decision.

Respondents, who were Defendants-Appellants in the court below, are the State of New Jersey; the New Jersey Department of the Treasury; the State's Governor, Christopher J. Christie; and its former Treasurer, Andrew Sidamon-Eristoff.¹ The New Jersey State Senate and New Jersey General Assembly were Defendants at the outset of the case, but were dismissed prior to the appeal.

The Boards of Trustees of the several Retirement Systems; New Jersey State Senate President Stephen M. Sweeney; New Jersey Assembly Speaker Vincent

¹ Robert A. Romano became the Acting Treasurer of New Jersey on July 6, 2015.

Prieto; and New Jersey Citizen Action were each granted leave to appear as *amicus curiae* in the proceedings below.

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OPINIONS BELOW

The New Jersey Supreme Court opinion reversing the Law Division judgment is not yet reported in *Atlantic Reporter*, but may be found at 222 N.J. 175 (2015) and 2015 WL 3551326. The Law Division opinion granting summary judgment to Petitioners on their impairment of contract claims, granting Petitioners' application for declaratory judgment, and denying Defendants' motion to dismiss Petitioners' claims is unreported but may be found at 2015 WL 1180818 (N.J. Law Div. Feb. 23, 2015). Each is reproduced in the Appendix to this Petition. (App. 1a-200a).

JURISDICTION

The New Jersey Supreme Court's opinion was issued on June 9, 2015. App. 1a. This Court has jurisdiction under 28 U.S.C. § 1257.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Relevant constitutional and statutory provisions are reproduced in the Appendix. App. 203a-205a.

STATEMENT OF THE CASE

A. Introduction

The New Jersey Supreme Court, in an effort to avoid the political difficulty of enforcing the federal Contract Clause, has once again eviscerated that Clause as it applies to multi-year contracts entered into by the State. In 1976, the New Jersey Supreme Court found enforcement of the federal Contract Clause outside “the powers of this Court to direct and enforce” because it would “intrude upon the functions of the legislatures of the respective States” to enforce binding contracts. *United States Trust Co. v. State*, 353 A.2d 514, 515, 517 (N.J. 1976). This Court reversed that decision, holding that “the Contract Clause limits otherwise legitimate exercises of state legislative authority.” *U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1, 21 (1977).

Now, the same state Supreme Court has made the same error: voiding a duly formed contract to avoid judicial review of a substantial impairment of a contractual right. The New Jersey court declared that it

“cannot resolve that need in place of the political branches.” App. 50a. The Court held that because a Contract Clause analysis could be a “protracted undertaking,” it should instead permit the State to impair its contracts, rather than conduct the Contract Clause analysis mandated by this Court in *U.S. Trust*. App. 52a-54a. Under this sweeping holding, *no* multi-year contract may bind the State of New Jersey, because two State constitutional provisions, common to nearly all state constitutions, purportedly prohibit any contract formation. As two dissenting justices pointed out, “the Federal Constitution’s Contract[] Clause . . . was intended to prevent precisely what occurred here—a State destroying a contract of its own making. Rights protected by the Federal Constitution cannot be defeated by a novel interpretation or reconfiguration of state contract law.” App. 58a-59a. This Court should grant certiorari to avoid this decision becoming a road map for making the Contract Clause a dead letter—much as it did four decades ago in *U.S. Trust*.

This matter arises from 2011 legislation enacted with bipartisan support creating a contractual obligation to the payment of public employers’ annual required contributions to New Jersey’s grossly underfunded pension systems, in consideration for public employees’ already-performed public service. 2011 N.J. Laws c. 78 (“Chapter 78”) (codified in pertinent part at N.J. Stat. Ann. § 43:3C-9.5 (West 2015)). Chapter 78 is a classic contract, established pursuant to legislation, using the unmistakable language required by the jurisprudence of this Court, as well as the New Jersey Supreme Court. In fact,

the legislative and executive branches could not have used clearer language to create a contractual right to funding—a contractual right granted in the same legislation that increased public employees’ contributions to the pension system and suspended COLA payments to retirees. Chapter 78 provides, in relevant part:

The amount of the State’s annually required contributions shall be included in all annual appropriations acts as a dedicated line item . . . [and e]ach member . . . shall have a contractual right to the annual required contribution amount being made by the member’s employer or by any other public entity. The contractual right to the annual required contribution means that the employer or other public entity shall make the annual required contribution on a timely basis to help ensure that the retirement system is securely funded and that the retirement benefits to which the members are entitled by statute and in consideration for their public service and in compensation for their work will be paid upon retirement. The failure of the State or any other public employer to make the annually required contribution shall be deemed to be an impairment of the contractual right of each employee.

N.J. Stat. Ann. § 43:3C-9.5(c)(2).

Underscoring the intent of the Legislature and the Executive to create a contractual right to pension funding, Governor Christie, six days before signing the bill, stated that Chapter 78 “makes it a contractual right of the folks in the pension system to have

those payments made. We're further locking ourselves into making those payments along those schedules." App. 217a.

After performing on this contract without challenge or question for the first two fiscal years after its passage, Governor Christie announced that for the State fiscal year ending June 30, 2015 ("FY2015"), he would contribute only \$681 million to the pension systems rather than the \$2.25 billion contractually required by Chapter 78. Rejecting this proposal, the Legislature passed a balanced budget that included the full, required payment, but the Governor line-item vetoed the Legislature's Appropriations Act, thus violating the State's contractual obligation. Petitioners exercised their right under Chapter 78 to file an action in the State Superior Court, alleging, *inter alia*, violations of the Contract Clauses in the State and federal Constitutions.

The trial court granted summary judgment for Petitioners. The Supreme Court reversed in a 5-2 decision.

B. The Pension Systems

At issue in this case are the rights of participants in the New Jersey public employee pension systems, the oldest of which was first established by the legislative and executive branches nearly a century ago. App. 208a. Each system is funded by contributions from employees and employers, including the State. App. 5a. The State's contributions ensure that public employees will receive their pension benefits, which are deferred compensation for services rendered. App. 5a; App. 60a (Albin, J., dissenting). The total

State payment owed to the pension systems in each year (the Annual Required Contribution or ARC) has two components: the “Normal Cost” and the unfunded accrued actuarial liability (“UAAL”). App. 5a-6a.

The UAAL is in significant part the result of missed Normal Cost contributions and the corresponding lost investment returns. Failure to pay the ARC increases the amounts due in future years and undermines the fiscal integrity of the pension systems. It is the ARC that the State contractually committed to pay annually under N.J. Stat. Ann. § 43:3C-9.5(c)(2). In 2010, the State committed to making up for past missed payments of the ARC by establishing a schedule of contributions increasing by sevenths, commencing at 1/7th of the ARC in FY2012, 2/7^{ths} in FY2013, and reaching 7/7^{ths} (or 100%) in FY2018. 2010 N.J. Laws c.1, § 38 (codified at N.J. Stat. Ann. § 43:3C-14 (West 2015)).

The State’s historical failure to appropriate the ARC, *see* App. 61a-62a (Albin, J., dissenting), which in turn led to chronic underfunding of the State’s pension system, was the subject of a lawsuit begun in 2003. That matter was ultimately decided by a State intermediate appeals court on March 4, 2010, which held that although the right of beneficiaries to receive pension benefits was unquestioned, the pension funding statutes then in place, which merely provided that the State “shall” make pension contributions, did not evidence a clear intent to establish in the beneficiaries an enforceable, “constitutionally protected contract right to the funding method adopted by the

Legislature.” *N.J. Educ. Ass’n v. State* (“*NJEA*”), 989 A.2d 282, 290 (N.J. App. Div. 2010).²

C. The Legislature and Governor Create a Contractual Right to Annual Appropriations

In 2011, in response to the *NJEA* decision, the Legislature passed, and Governor Christie signed, Chapter 78. Chapter 78 ensured the future fiscal health of the State’s pension systems in three ways: (1) reducing benefits to existing and future retirees by suspending the payment of cost of living adjustments (COLAs), *id.* at § 25(2)(a); (2) increasing employee pension contribution percentages, *id.* at §§ 8-10, 15; and most pertinent to this petition, (3) expressly creating a contractual right to the State’s payment of the ARC. *Id.* at § 26. Specifically, Section 26 of Chapter 78 declared that the State’s failure to make the ARC payment would constitute an impairment—not merely a breach—of that contractual right. *Id.* Further, in waiving the State’s sover-

² The *NJEA* court cited *Spina v. Consol. Police & Firemen’s Pension Fund*, 197 A.2d 169 (N.J. 1964). In *Spina*, a pension plan participant claimed a contractual right to a specific retirement age based upon a statute. The New Jersey Supreme Court determined that the law did not create a contractual right because “[n]ot a word [of the statute] smacks of an intent to require or to permit one.” *Id.* Nevertheless, the *Spina* Court acknowledged that the Legislature had the power to create binding “public contracts” that restricted the policy choices of subsequent legislatures. *Id.* at 176. The authority “for creating public contracts is the Legislature’s.” *Id.* Consistent with established federal law, the Court explained that a “commitment of that kind should be so plainly expressed that one cannot doubt the individual legislator understood and intended it.” *Id.*

eign immunity, the law vested in every member of the various pension systems, and in those systems' boards of trustees, a right cognizable in State court to enforce the "contractual right" to the State's payment of the ARC. *Id.*

Upon signing Chapter 78, Governor Christie called the compromise with legislative leaders "his biggest governmental victory," App. 97a (Albin, J., dissenting) (quotation omitted), and at a town hall meeting stated that the legislation established "a contractual right" to have the State make its annual required contributions to the pension systems. App. 217a. In FYs 2012 and 2013, the State appropriated and paid the full amounts due under the statute. App. 9a. And in the FY2014 Appropriations Act, 2013 N.J. Laws c.77, the State appropriated the 3/7^{ths} of the ARC due. *Id.* Likewise, on February 25, 2014, Governor Christie submitted to the Legislature his FY2015 budget recommendation, which included a pension payment of approximately \$2.25 billion, equaling the required 4/7^{ths} of the ARC, *id.*—a payment he characterized as a "non-discretionary" State obligation. App. 212a.

However, on May 20, 2014, one month before the end of the fiscal year, Governor Christie announced that due to an unanticipated revenue shortfall late in the budget year ending June 30, the State would pay 7/7^{ths} of the Normal Cost contribution for FY2014, but none of the UAAL contribution. App. 104a; App. 9a-10a. That is, of the \$1.58 billion fraction of the ARC owed for FY2014, the Governor proposed to pay only \$696 million. App. 9a. And for FY2015, the Governor proposed to pay only \$681 million of the \$2.25 billion fraction of the ARC. App. 10a.

D. The State Trial Court Proceedings

Petitioners, on behalf of individuals and unions representing hundreds of thousands of New Jersey State employees, filed complaints in State court alleging that the State's reduction of the FY2014 contribution, and the Governor's announced intention to reduce the FY2015 contribution, violated the federal and State Constitutions' Contract Clauses by impairing the contract right created by Chapter 78. In a temporary restraining order application decided on June 25, 2014, addressing the reduction in the contribution in FY2014, the trial court found that although Chapter 78 unmistakably established an enforceable contract right to the pension contributions and the Governor's reduction of the FY2014 pension payment constituted a substantial impairment of that contract right, the Governor's asserted basis for the reduction satisfied the "reasonable and necessary" test established by this Court in *U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1, 25-31 (1977). App. 11a, 108a. The trial court declined to address Petitioners' FY2015 claims at that time as premature. App. 11a.

On June 26, 2014, the Legislature presented the Governor with a FY2015 Appropriations Act, 2014 N.J. Laws c.14, that included the required full 4/7^{ths} of the ARC. *Id.* On June 30, 2014, the Governor line-item vetoed the required pension payment and reduced it by \$1.57 billion to \$681 million. *Id.* Petitioners amended their complaints and moved for summary judgment on their FY2015 claims.

On February 23, 2015, the trial court issued a comprehensive opinion granting summary judgment to Petitioners on their impairment of contract claims for

FY2015. The court reaffirmed its prior holding that the State had created a constitutionally-protected contract and concluded that Petitioners had properly asserted claims arising under the federal and State Constitutions. App. 107a, 168a-171a. The trial court rejected the State's argument that the State Constitution's Debt Limitation Clause foreclosed the creation of a constitutionally-protected contractual right to pension funding, concluding that the historical circumstances that motivated that provision, the case law interpreting it, and the intent and plain language of the clause, demonstrated that the clause applied only to debt that accrues interest. App. 120a-156a. The trial court explained that the purpose of the Debt Limitation Clause is to prevent the State from incurring debt for capital projects requiring the issuance of bonds without voter approval, and that the framers of the State Constitution did not intend to require voter approval to pay for the ordinary operating costs of government, such as leases or pension contributions for services rendered. App. 118a-145a.

Guided by the rulings of the highest courts of other states interpreting the meaning of the parallel debt limitation clauses in their respective state constitutions, the trial court found that in enacting Chapter 78, the State was not creating a new debt, nor was it borrowing money. Instead, Chapter 78 created a plan to pay down the State's pre-existing obligations generated by normal government operations. App. 145a-146a. The payments required by Chapter 78 were to fund the deferred compensation, *i.e.*, pensions of public employees for services rendered in the current fiscal year and in prior fiscal years. Therefore, the trial court concluded that Chapter 78 did not cre-

ate new debt; nor did it require or authorize the borrowing of money by the State. The court also rejected the argument that the Appropriations Clause barred formation of a contract or provided immunity from judicial review and enforcement under the Contract Clauses. App. 120a-140a, 157a-162a.

E. The State Supreme Court Proceedings

The New Jersey Supreme Court granted direct certification and reversed in a 5-2 decision. The Court acknowledged that Petitioners had argued both before the trial court and Supreme Court that the State's failure to make the required FY2015 ARC payment constituted an impairment of contract in violation of the Contract Clauses of both the State and federal Constitutions. App. 2a, 12a. The majority then found that by enacting Chapter 78, the Legislature and Governor intended to create a contractual right to timely and recurring pension payments. App. 16a, 19a-21a. Nevertheless, the majority found that the State Constitution's Debt Limitation Clause, coupled with the allocation of annual appropriations decisions to the political branches, interdicts the creation of a legally binding enforceable contract compelling payments into the State's pension funds. App. 39a-40a.

Finally, the Court, continuing its refusal to review the actions of the coordinate branches, observed that the separation of powers doctrine precludes court review of impairments because the "practical impact" of such review would result in the judicial intrusion upon the appropriations process—a rationale that flatly rejects this Court's mandate in *U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1, 24-26

(1977). The majority observed that application of this Court's reasonable and necessary test would be "a protracted undertaking" and "would require the Judiciary to exercise authority that is exclusively granted to the political branches" by the State Constitution. App. 52a-53a.

In a dissent joined by the Chief Justice of the New Jersey Supreme Court, Justice Albin pointed out that although the United States Supreme Court will "accord respectful consideration and great weight to the views of the State's highest court," it will not permit an interpretation that renders a federal "constitutional mandate . . . a dead letter." App. 83 (citing *Indiana ex rel. Anderson v. Brand*, 303 U.S. 95, 100 (1938)). *Brand*, reversing the state court's application of state law, emphasized the paramount role of this Court in reviewing "the statutes of the State and the decisions of its courts" to determine "whether a contract was made . . . its terms and conditions, and whether the State has, by later legislation, impaired its obligation." *Brand*, 303 U.S. at 101. The dissent below also cited to *Gen. Motors Corp. v. Romein*, 503 U.S. 181, 186 (1992), where this Court emphasized that "whether a contract was made is a federal question for purposes of Contract Clause analysis and whether it turns on issues of general or purely local law, we cannot surrender the duty to exercise our own judgment." (Internal quotation marks and citation omitted). See also *Irving Trust Co. v. Day*, 314 U.S. 556, 561 (1942) (stating that when a court "is asked to invalidate a state statute" on grounds that it violates the federal Contract Clause, "the existence of the contract and the nature and extent of its obligation become federal questions . . . and for such

purposes finality cannot be accorded to the views of a state court”).

Rejecting the “majority’s novel and strained interpretation of our State Constitution” to “defeat the federal rights of public workers in this case,” the dissenting Justices observed that “the majority pretends that it is not ‘declaring Chapter 78 unconstitutional,’” despite its conclusion that no contractual right could have been created. App. 83a, 85a. Further, cognizant that this Court, in *U.S. Trust*, previously rebuked the New Jersey Supreme Court for its unwillingness to scrutinize the State’s impairment of statutorily-created contracts through legislation, the dissenting Justices cautioned that the Supremacy Clause does not allow state constitutional provisions to eviscerate the federal Contract Clause, “forbid[ding] precisely what the State did in this case.” App. 67a. Finally, though Justice Albin acknowledged that while “reviewing fiscal decisions made by the State is not a role that any court wants to play,” as the “ultimate guarantors of constitutional rights,” the Court nevertheless could not “forsake the task assigned to us under the Constitution and demanded of us” by this Court in *U.S. Trust*. App. 82a-83a (citing 431 U.S. 1).

The majority opinion below is contrary to the other state highest courts that have ruled on whether the State’s debt limitation clause bars a state from establishing contractual obligations to make pension contributions. The New Jersey Supreme Court, standing alone, has done nothing less than render void *ab initio* any effort by the Legislature to create a binding multi-year contract, even for the ordinary operation of the State, and has applied this doctrine even to the year in which services were rendered and accepted.

REASONS FOR GRANTING THE PETITION

- A. The petition for a writ of certiorari should be granted under Rule 10(c) because the New Jersey Supreme Court has decided an important federal question in a way that conflicts with relevant decisions of this Court and permits the State to void contracts in violation of the federal Contract Clause.**

The New Jersey Supreme Court has interpreted its Constitution in a novel and unique fashion so as to prohibit its Legislature from forming any multi-year fiscal contracts binding under the federal Contract Clause, even when the Legislature unmistakably intended to form a contract. Grounding its decision on two constitutional provisions common to most state constitutions, this interpretation strips the Legislature of the capacity to make contracts, which this Court has “held to be ‘of the essence of sovereignty’ itself.” *United States v. Winstar Corp.*, 518 U.S. 839, 884 (1996) (quoting *United States v. Bekins*, 304 U.S. 27, 51-52 (1938)). It further eliminates “[g]overnment’s own long-run interest as a reliable contracting partner.” *Id.* Under the New Jersey Supreme Court’s decision, even an unmistakable contract from the State of New Jersey becomes a hollow promise with no rights of enforcement.

In rejecting Petitioners’ contractual claim to their pension contributions under Chapter 78, the New Jersey Supreme Court also eschewed its legal obligation to adjudicate the impairment of a contract, even though it admitted that its own state’s

Legislature and Executive unmistakably intended to form such a contract. The New Jersey Supreme Court wrongly avoided its obligations under the federal Contract Clause by asserting that the judicial branch is without power to adjudicate the impairment of contracts because to do so would intrude on the other branches' powers, echoing that Court's previous refusal to "intrude upon the functions of the legislatures of the respective States" to enforce binding contracts. *United States Trust Co. v. State*, 353 A.2d 514, 515, 517 (N.J. 1976). This Court reversed the New Jersey Supreme Court's prior attempts to shirk its adjudicative responsibilities, holding that "the Contract Clause limits otherwise legitimate exercises of state legislative authority." *U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1, 21 (1977). Once again, in the face of an impairment of contract claim, the New Jersey Supreme Court has refused to engage in the analysis of legislative action required by this Court because it finds it more politically expedient to allow the State to simply repudiate its contracts. This Court should, as it did in *U.S. Trust*, reject this attempt to read the Contract Clause out of the Constitution.

Two centuries of this Court's precedent has consistently found that state legislation creating a contract, even though it binds future legislatures, is uniquely protected by the federal Contract Clause from impairment by a state. *See, e.g., Fletcher v. Peck*, 10 U.S. 87 (1810) (prohibiting Georgia from rescinding land grant made by prior Legislature); *State of Indiana ex rel. Anderson v. Brand*, 303 U.S. 95, 100 (1938) ("If the people's representa-

tives deem it in the public interest they may adopt a policy of contracting in respect of public business for a term longer than the life of the current session of the legislature”). Whether a contract exists, whether a contract is proscribed by a state constitutional provision, and whether a state law impairs a contractual right, are federal questions arising under the federal Constitution and are decided independently by this Court. *Mobile & O.R. Co. v. State of Tennessee*, 153 U.S. 486, 492-93 (1894). See also *Jefferson Branch Bank v. Skelly*, 66 U.S. 436, 443-44 (1861); *U.S. Trust*, 431 U.S. 1.

Despite two centuries of precedent, the New Jersey Supreme Court opined that common provisions found in most state constitutions since the mid-19th century, the Debt Limitation and Appropriations Clauses, supersede and prevent the application and enforcement of the federal Contract Clause. Because of these common state constitutional provisions, the court below held that “the State cannot by contract or statute create a binding and legally enforceable financial obligation above a certain amount that applies year to year without voter approval.” App. 24a. This singular construction of common constitutional clauses precludes the State from exercising its sovereign authority to create or enter into enforceable multi-year contracts that require or expressly promise a State appropriation—even common contracts such as leases or purchases of supplies. As a result of the decision of the New Jersey Supreme Court, there are now *no* enforceable contracts requiring appropriations to which the State of New Jersey is a party absent voter approval, and any that were purportedly created are void *ab initio*. Accordingly, there is no

judicial enforcement of any clear commitment by the political branches to the creation of a contract right.

The New Jersey Supreme Court does not dispute that the Legislature and Executive unmistakably intended to form a contract in a bipartisan effort to rescue the State's pension systems from rapidly approaching insolvency. As the Court notes, "Here the Legislature certainly spoke with clarity and used terminology that plainly expressed its intent to create contractual rights." App. 19a. Rather, the majority below held that even when the State unmistakably forms a contract under the federal Contract Clause, any contract creating a multi-year commitment is void *ab initio* because of State constitutional provisions. As the dissent correctly notes, the Supremacy Clause does not allow state constitutional provisions to eviscerate the federal Contract Clause, which "forbids precisely what the State did in this case." App. 76a.

Not surprisingly, the New Jersey Supreme Court decision stands alone in allowing these common constitutional provisions to bar the formation of any contractual rights. Review and reversal of the decision of the New Jersey Supreme Court is required in order to prevent other states from following the lead of New Jersey's highest court by relying on the debt limitation and fiscal clauses in their respective constitutions to repudiate their contracts, and to protect the contract rights of the hundreds of thousands of participants in the state pension systems who reasonably relied upon a contract that even the decision below does not dispute was unmistakably intended to grant them contractual rights.

1. The Court should determine for itself whether Chapter 78 created a contract right.

The federal Contract Clause, unique in its intent and design, requires federal courts to ensure that states uphold contract rights despite the constant temptation to repudiate those rights. Thus, the Contract Clause provides a “single exception” to the normal rule that this Court defers to decisions of the states’ highest courts construing state constitutional provisions and state laws as conclusive. *Jefferson Branch Bank v. Skelly*, 66 U.S. 436, 434-44 (1861). This Court possesses the paramount authority to determine “the existence or nonexistence of the contract set up, and whether its obligation has been impaired by the state.” *Mobile & O.R. Co.*, 153 U.S. at 492-93.

This Court will not simply defer to a state’s highest court’s decision that a contract contravenes provisions of the state constitution and “hence [was] not within the power of the legislature to make,” because “[t]he question of the existence or nonexistence of a contract . . . is one which this court will determine for itself.” *Id.* at 492-93; *see also McCullough v. Virginia*, 172 U.S. 102, 121 (1898); *Houston T.C.R. Co. v. State of Texas*, 177 U.S. 66, 77 (1900) (asserting this Court’s jurisdiction and “its duty to determine for itself the existence, construction, and validity of the alleged [statutory] contract,” and reversing state court determination that contract formation would have been “in utter violation of the state Constitution”). While this Court will pay limited deference to a state Supreme Court decision interpreting state

constitutional and statutory provisions in the context of a Contract Clause analysis, this Court is “bound to decide for [itself] . . . whether a contract was made.” *Indiana ex rel. Anderson v. Brand*, 303 U.S. 95, 100 (1938).

The New Jersey Supreme Court attempts to distinguish *Brand* by claiming that there, the “Indiana Supreme Court did not rely on an express, specific provision in its state constitution restricting legislative power to enter into the contract at issue.” App. 44 n.8. The majority below ignores the fact that the *Brand* Court refused to find that the Indiana legislature’s power under Article 8, Section 1 of the state constitution permitted it to invalidate the formation of a binding teaching contract. The state constitution expressly reposed control over schools in the legislature, thereby constitutionally vesting control over teacher contracts (the issue presented in *Brand*) in the legislature. 303 U.S. at 111, 115-16 (Black, J., dissenting). The existence of this state constitutional provision did not persuade the majority in *Brand* to accept the dissent’s view that the provision precluded the formation of a binding contractual right.

This Court should grant certiorari because the decision below renders the Contract Clause a nullity in New Jersey, a result that this Court has never allowed in so sweeping a fashion, and to avoid the New Jersey Supreme Court decision becoming a road map for other states to interpret the parallel provisions of their constitutions to render the Contract Clause a dead letter. The federal Contract Clause does not permit abdication of the role of adjudication under novel theories voiding the formation of fiscal con-

tracts by the political branches. The Supreme Court of the United States should not permit the evisceration of all contracts to which the State is a party.

2. Barring contracts from binding subsequent legislatures despite unmistakable intent to form a contract violates the Contract Clause.

The New Jersey Supreme Court does not dispute that the Legislature, in the clearest terms, intended to form a contract. Yet the Court held that even when the Legislature met this unmistakability test, it could not effectively form contracts because the State's contracts could not bind future legislatures. Such an interpretation strikes at the core of the Contract Clause: that when a legislature unmistakably creates a contract, that contract can and does bind future legislatures.

Although the principal function of a legislative body is to make laws that declare the policy of the state and are subject to repeal when a subsequent legislature determines to alter that policy, a contractual obligation may be established provided the intent of the body to create a contract is clearly and unmistakably expressed. *Brand*, 303 U.S. at 104-06; *National R.R. Passenger Corp. v. Atchison, Topeka & Santa Fe Ry. Co.*, 470 U.S. 451, 465-66 (1985) (internal citations omitted). See also *Dodge v. Board of Educ.*, 302 U.S. 74, 78-79 (1937). Accordingly, the state's representatives may, through legislation, establish a contract for a term longer than the life of the current session of the legislative year. *Brand*, 303 U.S. at 105; *Jefferson*, 66 U.S. at 446. As early as 1810, this Court held that the

Contract Clause prohibited a state from rescinding land grants made by a prior legislature and applied the Clause to public contracts entered into by the state. *Fletcher v. Peck*, 10 U.S. 87 (1810).

Indeed, the right to enter into binding contracts is inherent in the sovereign power of the legislative and executive branches. *United States v. Winstar Corp.*, 518 U.S. 839, 884 (1996); *Jefferson*, 66 U.S. at 446 (legislature can create contract right that will bind a subsequent legislature). “It is of the essence of sovereignty to be able to make contracts and give consents bearing upon the exertion of governmental power. The State is free to make contracts with individuals and give consents upon which the other contracting party may rely with respect to a particular use of governmental authority.” *United States v. Bekins*, 304 U.S. 27, 51-52 (1938) (citations omitted). The very purpose of the Contract Clause is to ensure that subsequent legislatures do not contravene contracts entered into in prior sessions. *U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1, 26 (1977); *Brand*, 303 U.S. at 100.

In *U.S. Trust*, this Court elaborated upon a state’s right to bind itself to future obligations:

Whatever the propriety of a State’s binding itself to a future course of conduct in other contexts, the power to enter into effective financial contracts cannot be questioned. Any financial obligation could be regarded in theory as a relinquishment of the State’s spending power, since money spent to repay debts is not available for other purposes. Similarly, the taxing power may have to be exer-

cised if debts are to be repaid. Notwithstanding these effects, the Courts have regularly held that the States are bound by their debt contracts.

U.S. Trust, 431 U.S. at 25.

Precisely because legislation that creates a contract right binds subsequent legislatures, this Court established a strict test for determining whether legislation creates contractual rights. *Brand*, 303 U.S. at 104-05; *Hoffman v. City of Warwick*, 909 F.2d 608, 614 (1st Cir. 1990). Thus, “absent some clear indication that the legislature intends to bind itself contractually, the presumption is that ‘a law is not intended to create private contractual or vested rights.’” *National R.R. Passenger Corp.*, 470 U.S. at 465–66 (quoting *Dodge v. Board of Educ.*, 302 U.S. 74, 79 (1937)). However, once this exacting test of unmistakability is met, the statutory creation of a contract bars a subsequent legislature from significantly impairing that obligation for merely rational reasons. *Brand*, 303 U.S. at 108-09; *U.S. Trust*, 431 U.S. at 29. As the First Circuit succinctly explained:

Finding a public contractual obligation has considerable effect. It means that a subsequent legislature is not free to significantly impair that obligation for merely rational reasons. Because of this constraint on subsequent legislatures, and thus on subsequent decisions by those who represent the public, there is, for the purposes of the Contract Clause, a higher burden to establish that a contractual obligation has been created. For similar reasons, this issue is one of federal, not state law.

Parella v. Ret. Bd. of Rhode Island Employees' Ret. Sys., 173 F.3d 46, 60 (1st Cir. 1999) (citing *Dodge*, 302 U.S. at 79).

Here, the unmistakability of the contract is undisputed. Even the majority below concedes that “the Legislature certainly spoke with clarity and used terminology that plainly expressed its intent to create contractual rights.” App. 19a-20a. The statute states that “Each member of the [pension funds] shall have a contractual right to the annual required contribution amount being made” and that “The failure of the State or any other public employer to make the annually required contribution shall be deemed to be an impairment of the contractual right of each employee.” N.J. Stat. Ann. § 43:3C-9.5(c)(2). It is undisputed that the contract at issue in this case passes the unmistakability analysis.

However, the New Jersey Supreme Court erroneously and in violation of this Court’s precedent held that even when a legislative body evinces an unmistakable intent to form a contract, it may not bind future legislatures. The New Jersey Supreme Court voided virtually all contracts between the State and private parties by relying upon two constitutional clauses commonly found in state constitutions: provisions limiting public debt and provisions providing generally for an annual appropriations process. “Our conclusion that no enforceable contract was created here because the Debt Limitation Clause prohibited the Legislature and Governor from binding the State to an enforceable contract of this nature eliminates the need to engage further in a contract impairment analysis.” App. 54a-55a. The Court

added, “[t]he Legislature and Governor, as well as the many interested parties involved in the legislative process, may have included contractual words in Chapter 78, but those words, no matter their clarity, could not create an enforceable contract of the type asserted. The Debt Limitation Clause barred it.” App. 40a. The Court similarly held as to the Appropriations Clause: “the Legislature’s strong expression of intent [to create a contract] remains clear in Chapter 78, but it does not bind future legislatures or governors in a manner that strips discretionary functions concerning appropriations that our Constitution leaves to the legislative and executive branches.” App. 42a.

The New Jersey Supreme Court’s reliance on common aspects of state constitutions, namely Debt Limitation and Appropriations Clauses, to invalidate the federal contractual right to pension funding created by Chapter 78, prevents the legislative formation of any contract that requires an appropriation. Indeed, the Court readily admits that its decision means “the State cannot by contract or statute create a binding and legally enforceable financial obligation above a certain amount that applies year to year without voter approval.” App. 24a. This sweeping principle applies not just to the law at issue in this matter but to any multi-year contract, no matter how unmistakable the language used to create the contract.

The New Jersey Supreme Court has made clear that the State has long exceeded the amount of debt permissible without voter approval. *See Bulman v. McCrane*, 312 A.2d 857, 869 (N.J. 1973). Thus, any and all fiscal “contracts” create a “debt” subject to the stric-

tures of the Debt Limitation Clause, and voter approval is a necessary prerequisite to enter into any binding multi-year contract requiring an appropriation—whether to lease a building, order pencils for state offices, or pay off previously existing pension obligations incurred for services rendered by public employees.³ It is no exaggeration to say, and indeed the Supreme Court of New Jersey acknowledges, that under the decision below, the Legislature lacks the authority to create any multi-year fiscal contractual right. There are now *no* enforceable contracts requiring annual appropriations to which the State of New Jersey is a party absent voter approval, and any that were purportedly created are void *ab initio*.

If New Jersey's Constitution proscribes the application and supremacy of the federal Contract Clause to non-voter-approved multi-year contracts, many other state constitutions would necessarily be susceptible to the same, or even more extreme, constructions. Indeed, an analysis by the National Conference of State Legislatures finds that 45 states

³ The Court below, echoing the argument of the State, observed that nearly all state contracts included language expressly subjecting them to appropriation by the Legislature. Petitioners do not doubt or question that proposition, but it is legally irrelevant. To insert into a bilateral document or instrument in advance of signing that all expenditures of money are subject to appropriation has no bearing on legislation clearly creating a contract right without any such limitation. In any event, even under a contract with such an express proviso, the State would still be deemed liable for payment for services rendered and which it accepted, which the New Jersey Supreme Court rejected for FY2015 despite the State having accepted services.

have constitutional provisions limiting debt and constraining appropriations in some manner. *See* National Conference of State Legislatures, “NCSL Fiscal Brief: State Balanced Budget Provisions,” October 2010 at Appendix I, available at <http://www.ncsl.org/documents/fiscal/StateBalancedBudget-Provisions2010.pdf> (last visited August 27, 2015). A large share of these provisions, including New Jersey’s, date to the mid-19th century. *Id.* If the mere inclusion of basic debt and budgeting provisions in a state constitution prohibits a state legislature from binding future legislatures, then the long-established law that the Contract Clause provides for just such binding commitments would become an empty illusion.

In addition to voiding the formation of all fiscal contracts under the Debt Limitations Clause, the Supreme Court of New Jersey also found under the Appropriations Clause that a legislature could “not bind future legislatures or governors in a manner that strips discretionary functions concerning appropriations that our Constitution leaves to the legislative and executive branches.” App. 42a. This is the same reasoning, and mistake, it made in 1976 in *U.S. Trust*. This proposition reflects the Court’s misuse of the doctrine of separation of powers as the authority to hold that the Legislature cannot create a contractual right at all. The point of the federal Contract Clause is to ensure that subsequent legislatures do not use their discretionary powers to strip away constitutional rights. But judicial recognition of the core powers of the political branches is not a means to conclude that the political branches are powerless to create contract rights in the first place, or that the court is powerless to protect a contract right.

Petitioners do not deny the unremarkable concept that the State Constitution reposes in the Legislature the right to control the purse strings in an annual balanced budget. Indeed, essentially similar appropriation clauses appear in practically all state constitutions. But the allocation of the appropriation process to the political branches does not constitute a constitutional bar to their formation of a contract. The Contract Clause assumes the authority of the political branches to form contracts, which is why it forbids their impairment.

To hold, as the New Jersey Supreme Court has done here, that the assignment of appropriations to the legislative branch precludes the formation of a contract right enforceable by the judiciary, is anathema to two hundred years of this Court's holding that the legislative branch can create binding contracts. The very purpose of the federal Contract Clause is to imbue the judiciary with the responsibility to ensure that the political branches abide by the commitments they are authorized to create by clear and unmistakable language and intent, including the obligation to pay for services rendered. That the state constitutions assign the appropriation process to the political branches does not prevent them from creating fiscal commitments, or immunize those commitments from judicial review, and the courts cannot evade their obligation under the federal Constitution under the novel guise of holding that separation of powers precludes contract formation.

New Jersey's highest court has for all intents and purposes eliminated the sovereign power of the State to create contracts through clear and unmistakable legis-

lation, and has in the process barred the application of the federal Contract Clause to all contracts entered into by the State of New Jersey that require an annual appropriation and that are not approved by the voters. If left intact, this holding would not only preclude the formation of a contract right to pension contributions, it would prevent the State from entering into any contract or for any service agreement for any sum of money, no matter how insignificant. As set forth more fully *infra*, no other state supreme court has construed its constitution's debt limitation and appropriations clauses in a manner to bar a legislature from creating contractual rights protected by the federal Contract Clause.⁴

Even the New Jersey Supreme Court had previously held contracts enforceable over multiple years notwithstanding the Debt Limitation and Appropriations Clauses in the State Constitution. *P. T. & L. Constr. Corp. v. Comm'r, Dep't of Transp.*, 288 A.2d 574 (N.J. 1972) (describing State and federal Contract Clauses as “parallel” and holding that courts may adjudicate contract claims, rejecting assertion that Legislature was only forum for such claims). There is nothing in this Court's history interpreting and applying the federal Contract Clause that would justify or support the conclusion that such commonplace provisions of a state constitution could

⁴ The Court's holding is not confined to future legislatures and future services. In FY2015, the public employees “accepted as the basis for action” the statutory promise to make the full pension payment, and provided full performance. *Indiana ex rel. Anderson v. Brand*, 303 U.S. 95, 100 (1938). Yet the State made but a fraction of its payment of the ARC, an impairment that the Supreme Court of New Jersey has now condoned.

thwart a legislature's unmistakable creation of a contractual right.

This Court should grant petitioners' request for review because the New Jersey Supreme Court has insulated the State from the reach of the federal Contract Clause by removing from the legislative and executive branches their sovereign authority to enter into binding contracts through the use of language intended to unmistakably convey such intent. There is nothing in this Court's history interpreting and applying the federal Contract Clause that would justify or support the conclusion that such commonplace provisions of a state constitution could thwart a legislature's unmistakable creation of a contractual right, or remove the judiciary's constitutional obligation to ensure that those contractual commitments are enforced.

3. The New Jersey Supreme Court wrongly preferred an interpretation of the State Constitution that precludes the formation of a contract in order to avoid its obligation under the federal Contract Clause to consider whether an impairment would be justified as reasonable and necessary.

The New Jersey Supreme Court does not dispute that the Legislature and Executive unmistakably intended to form a contract in a bipartisan effort to rescue the State's pension systems from approaching insolvency. The statute states that "Each member of the [pension funds] shall have a contractual right to the annual required contribution amount being made" and that "The failure of the State or

any other public employer to make the annually required contribution shall be deemed to be an impairment of the contractual right of each employee.” N.J. Stat. Ann. § 43:3C-9.5(c)(2).

Thus, the statute at issue in this matter indisputably reflects a “clear indication that the legislature intends to bind itself contractually.” *National R.R. Passenger Corp. v. Atchison, Topeka & Santa Fe Ry. Co.*, 470 U.S. 451, 465–66 (1985). Despite the clarity of the contract, however, the New Jersey Supreme Court, as was the case in *U.S. Trust*, did not want to be placed in the position of ordering the other branches to adhere to the contract.

As with its conclusion that the separation of powers precluded the Legislature from creating a contractual right, the court below concluded that it would likewise violate “separation of powers” principles for the state judiciary to conduct a reasonable and necessary analysis whenever the State substantially impaired its contractual obligation to fund the pension system. Therefore, the Court reasoned, it had no choice but to construe the State Constitution to deprive the legislative and executive branches of their sovereign authority to create contractual rights by statute. Significantly, the New Jersey Supreme Court did not mince words reflecting its true agenda:

Ultimately, the Contract Clause reasonable-and-necessary analysis implicated in this case would require the Judiciary to exercise authority that is exclusively granted to the political branches. *N.J. Const.* art. VIII, § 2, ¶ 2; *N.J. Const.* art. V, § 1, ¶ 15; *see also City of*

Camden, supra, 82 N.J. at 158, 411 A.2d 462; *Karcher, supra*, 97 N.J. at 489–90, 479 A.2d 403. In this setting, the application of a Contract Clause analysis by the Judiciary would cause a violation of our Constitution’s separation-of-powers principles. *See N.J. Const.* art. III, ¶ 1 (providing that no branch of government may “exercise any of the powers properly belonging to either of the others, except as expressly provided in this Constitution”).

App. 53a. It was this underlying proposition that reveals the Court’s real reasoning: the New Jersey Supreme Court abdicated its responsibility under the federal Contract Clause to uphold valid contracts entered into by the State because it wrongly saw judicial enforcement of contracts as implicating political questions. And it turned its reluctance to judge the actions of the other branches into a basis to conclude that the other branches lacked authority to create a contract in the first place.

When it was last called upon to address the New Jersey Supreme Court’s reluctance to review a legislative impairment of a contract protected by the federal Contract Clause, this Court made clear that the judiciary has a duty to engage in a meaningful review of such impairments through a reasonable and necessary analysis. “The Contract Clause is not an absolute bar to subsequent modification of a State’s own financial obligations. As with laws impairing the obligations of private contracts, an impairment may be constitutional if it is reasonable and necessary to serve an important public purpose.” *U.S. Trust*, 431 U.S. at 25. Under the reasonable and necessary analysis to be performed by a court reviewing a substan-

tial impairment, “complete deference to a legislative assessment of reasonableness and necessity is not appropriate because the State’s self-interest is at stake.” *Id.* at 26. In language apropos here, this Court observed that “[a] governmental entity can always find a use for extra money, especially when taxes do not have to be raised. If a State could reduce its financial obligations whenever it wanted to spend the money for what it regarded as an important public purpose, the Contract Clause would provide no protection at all.” *Id.*

This Court understood and underscored that the test it announced in *U.S. Trust* would necessitate the very role that a majority of the New Jersey Supreme Court below so clearly desired to avoid at all steps and at all costs, and used as a predicate to void the formation of any contract. In a lengthy dissent, Justice Brennan criticized the *U.S. Trust* majority’s reasonable and necessary test as an “active[] intru[sion] into . . . economic and policy matters” in a manner that would effect “enormous institutional and social costs,” by announcing a standard of review using “particular words like ‘reasonable’ and ‘necessary’” that have established meanings in the context of judicial review, and “therefore, represents a most unusual hybrid which manages to merge the two polar extremes of judicial intervention[.]” 431 U.S. at 62 n.14 (Brennan, J., dissenting). Thus, there can be no question that this Court in *U.S. Trust* fully considered the implication of the duty that it imposed on the judiciary to engage in the ostensibly intrusive task of reviewing legislative policy determinations. Nonetheless, in recognition of a state’s ever-present temptation to repudiate its contractual obligations in lieu of more difficult policy choices, such as

raising taxes, this Court rejected those arguments and cemented the judiciary's obligation to review legislative determinations that result in the impairment of its contractual obligations.

That a majority of the New Jersey Supreme Court would have preferred that this Court had adopted the approach advocated by the dissent in *U.S. Trust* does not negate the obligation imposed by this Court to acknowledge the formation of a contract and to review legislative determinations that impair contract rights, even where such review “would require the Judiciary to exercise authority that is exclusively granted to the political branches” under a state constitution subordinate to the federal Contract Clause. App. 53a. The declared intent to avoid its judicial responsibility to review substantial contract impairments cannot be converted into the basis to void contract formation. The New Jersey Supreme Court decision stands constitutional jurisprudence on its head: the federal Contract Clause is of no effect because the State will not engage in judicial review.

B. The petition for a writ of certiorari should be granted under Rule 10(b) because the New Jersey Supreme Court has decided an important question in a way that conflicts with the decisions of other state courts of last resort.

Consistent with the dissent below, all other state courts of last resort that have considered whether the on-going obligation to fund the pension system violates the debt limitation clauses of their respective state constitutions have concluded that such

constitutional provisions do not bar the formation of a contract under the Contract Clause. In contrast, the New Jersey Supreme Court interprets that common constitutional provision to trump the federal Contract Clause. Because there is now a split between state courts of last resort on the interplay between a federal constitutional clause and a clause common to nearly every state constitution, this Court should grant certiorari.

In *State ex. rel. Wittler v. Yelle*, 399 P.2d 319, 324-25 (Wash. 1965), the Washington Supreme Court distinguished between obligations for current expenses and those for repayment of money borrowed. The court concluded that since the state had neither borrowed money nor issued any bonds, debentures, certificates or other instruments by which a debt may be evidenced, legislation increasing pension benefits and admonishing succeeding sessions of the legislature to fund the increases from the state's general fund did not create a debt violative of the state's debt limitation clause.

Likewise, in *Columbia County v. Bd. of Trs. of Wisconsin Ret. Fund*, 116 N.W. 2d 142, 151-52 (Wis. 1962), the Wisconsin Supreme Court held that a statute requiring counties to contribute to the retirement fund of public employees for current and past services performed, the past services to be amortized over a 40-year period, did not create a debt within the debt limitations provisions of the state constitution.

Again in *Rochlin v. State*, 540 P.2d 643, 648 (Ariz. 1975), the state's highest court held that the debt limitation clause "was meant to apply to borrowing

money for the operation of state government. In the instance of the retirement system the State has not borrowed any money. Any liability which has arisen is not due to borrowing funds; hence it is not 'debt' in the sense of Section 5, Article 9 of the constitution."

Finally, in *Village of Chefornak v. Hooper Bay Construction Company*, 758 P.2d 1266, 1269-70 (Alaska 1988), the Alaska Supreme Court, citing *Rochlin* and *Wittler*, held that the constitutional debt limitation clause applied only to borrowing money, via the issuance of bonds or other paper indebtedness.

The New Jersey Supreme Court stands alone in determining that a clearly stated statutorily-created fiscal contract, which has none of the traditional characteristics of bonds subject to debt limitation clauses is void *ab initio*. As the dissenting Justices below recognized, such a novel reading of a state debt limitation clause uniquely avoids engaging in the analysis prescribed by this Court in *U.S. Trust* and deprives the aggrieved participants of their federal constitutional rights to pension contributions. App. 82a-83a. And this reading stands alone in its refusal to recognize the authority of the political branches to create a contractual right protected against impairment by a subsequent state action. The Court should grant certiorari to resolve this conflict.

CONCLUSION

The petition for a writ of certiorari should be granted.

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