



NCRGEA *Government Relations* **Update**

NCRGEA Governmental Relations Update #21-33 **October 7, 2021**

The Governor, President Pro Tempore and the Speaker of the House continue to negotiate on the State's budget. We will keep you posted on their progress. Below is a summary of the Supreme Court hearing on the Lake Case that took place earlier this week.

NC Supreme Court Hearing in Lake v State Health Plan

The North Carolina Supreme Court heard oral arguments Monday afternoon in the I. Beverly Lake, et al v. State Health Plan, et al case. The case is in the Supreme Court on appeal from a decision of the North Carolina Court of Appeals that held that North Carolina State Government retirees did not have contractually and constitutionally guaranteed retirement health benefits. The Court of Appeals decision reversed a ruling in North Carolina Superior Court that held for the plaintiff retirees.

Sam McGee of Tin Fulton Walker & Owen, PLLC and Michael Carpenter of Gray, Layton, Kersh, Solomon, Furr & Smith, PA, argued the case for plaintiff retirees. McGee argued that the General Assembly violated the contract with vested retirees in 2011 when it amended the State Health Plan to provide that retirees would have to pay a premium if they wanted to keep the basic 80/20 health plan. If they did not pay the premium, their benefits would be reduced to 70/30. McGee argued that a long line of Supreme Court cases, most notably Bailey and Faulkenberry, stood for the principle that such benefits were more in the nature of deferred compensation and that the State was contractually and constitutionally obligated to maintain those benefits.

Ryan Park of the North Carolina Attorney General's Office argued for the State. Park contended that health benefits were not in the nature of deferred compensation. Park contended that the General Assembly reserved the right to alter, amend or repeal the State Health Plan at any time.

On rebuttal, Michael Carpenter argued that the State does not have the right to alter, amend or repeal the Plan once the employee/retiree has vested in accordance with State law. We invite you to view the recording of the live session at this link: <https://youtu.be/2gM-qkg0vt8>.

The Supreme Court does not issue decisions on cases immediately after the arguments are concluded. The general practice is for the Court to meet in conference after the arguments are concluded, discuss the case, and vote on whether to affirm or reverse the decision of the Court of Appeals. One of the Justices who voted on the prevailing side then writes an opinion for the Court that is circulated to the other Justices. The Court issues a written decision when all Justices have had an opportunity to review. The release of the written decision of the Court usually takes from two to six months; however, some complex cases have taken longer.

Stay Tuned!

Richard Rogers
NCRGEA Executive Director