

POLICY *report*

Goldwater Institute

No. 268 | June 10, 2014

Public Money for Private Gain: Legal Strategies to End Taxpayer-Funded Union Activism and Pension Spiking

by Jonathan Riches; contributing authors Taylor Earl and Clint Bolick, with appreciation to Aditya Dynar for his research and analysis

Numerous states are shaking off decades-old union shackles that have dampened job growth, weighed down economies, and created fiscal crises. The rust-belt states of Michigan and Indiana are the latest to convert to right-to-work states, putting them on a better footing for economic growth.

However, while private-sector unions are shrinking, public-sector unions aren't retreating quietly. Public-employee unions play an outsized role in electing state and local officials with whom they then typically bargain behind closed doors over wages and benefits. These unions are leveraging that power to push back against right-to-work and implement policies known as release time and pension spiking.

Governments at every level allow their employees to take "release time" from their regular jobs to serve as union representatives. But this is no mere "release"—in many instances governments pay public employees their normal salaries and benefits, even though they are actually working for the unions. Public employees use release time to negotiate higher wages and benefits, to file costly grievances against their employers, and even to engage in electoral politics and lobbying—all at taxpayer expense.

Pension spiking is another tactic public unions frequently employ in right-to-work states. While the vast majority of private-sector employees have defined-contribution plans if they have retirement benefits at all, far more costly defined-benefit plans remain commonplace in the public sector, placing enormous strains on state and local budgets. This fiscal strain is exacerbated by the practice of pension spiking, which adds benefits such as unused vacation and sick leave to the base salary for purposes of calculating lifetime pensions. Spiking can inflate pension payouts exponentially.

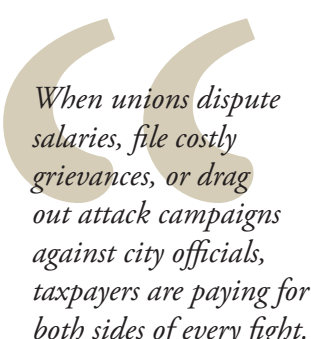
This how-to guide details tools the Goldwater Institute has developed to protect taxpayers and government budgets from the strain of release time and pension spiking. These tools are available in nearly every state, and some of them can be applied even at the federal level.

Introduction

Imagine a city council contacting a local McDonald's and saying, "We want to donate city workers to your business. The city will keep paying their salaries, but they will be your employees. Put them in McDonald's uniforms, make them sell hamburgers—the city doesn't care. They're yours." After the initial shock, the McDonald's owner would no doubt respond, "I'm lovin' it!"

Sound far-fetched? Unfortunately, this type of government handout happens every day. But instead of fast-food, the beneficiaries are public-employee unions. Under a practice called union "release time" (or "official time"), governments allow public employees to leave their jobs and go work for their unions. And all the while, taxpayers continue to fund the employees' salaries and benefits.

This means that when unions dispute salaries, file costly grievances, or drag out attack campaigns against city officials, taxpayers are paying for both sides of every fight.



When unions dispute salaries, file costly grievances, or drag out attack campaigns against city officials, taxpayers are paying for both sides of every fight.

Now imagine that after closed-door negotiations with an employee union a city council added several provisions to its union contract allowing city employees to save up and then cash in unused sick leave, vacation leave, overtime, and other benefits during their last few years of employment. These accrued benefits would dramatically boost the baseline for pension payouts because pension benefits are based largely on the employee's final salary at the time of retirement. Thus, any employee who took advantage of these provisions by saving up leave or working overtime could inflate their pensions by huge amounts in perpetuity.

Also sound unlikely? Unfortunately, this practice of "pension spiking" is occurring throughout the country at extraordinary costs to taxpayers. The practice is undermining the fiscal health of governments because they cannot budget for spiking since they do not know which employees will take advantage of these provisions. Moreover, employees who have worked the same number of years and retire in the same position receive grossly different pensions. In the city of Phoenix, Arizona alone, police officers who took advantage of these provisions had pensions nearly twice as high as those who did not. The pension costs in the city for just one group of employees have risen 1,500 percent in 10 years—from \$7.2 million a year in 2003 to over \$107 million in 2013.¹

This publication provides legal tools to challenge these union abuses.

PART I: RELEASE TIME

What is Release Time?

Release time is negotiated as part of the “collective bargaining” or “meet and confer” contracts between public employers and unions. Release time comes in many shapes and sizes, but it can generally be distilled down to three types.

The first is full-time release, which lets public employees leave their jobs completely to do solely union work. They report to union headquarters and their government supervisors do not know where they are or what they are doing, yet they receive full pay and benefits, including pensions, from the government employer.

The second type is a bank of hours, which gives unions a certain amount of hours that can be used for a wide range of union activities. While using these hours, public employees can leave their jobs during a shift and do whatever the union wants, including preparing grievances against the government employer.


The third type is activity-specific release time, where the government tells the union they can use public employees to perform a certain activity. Activity-specific release time can come with unlimited hours (such as unlimited hours for contract negotiations with the government) or a cap (such as 200 hours for union conferences).

The activities performed by employees on release time are varied, and often bear no resemblance to the duties for which the employee was hired. Moreover, in many instances, release time employees engage in activities that are often at direct odds with the interests of their public employers.

For example, release time is used to campaign for candidates for public office and lobby legislative bodies on bills (in many cases taking positions on legislation that is contrary to the employer’s position). Taxpayers are, therefore, funding the political activities of a private organization that may be advocating for legislation with which many taxpayers vehemently disagree.

Additionally, release time is commonly used to initiate and file grievances against the public employer. This is tantamount to a company paying several full-time employees to petition other employees to file complaints against the company that the company must then resolve.

Release time is also regularly used to negotiate over wages, benefits, and other conditions of employment. In these circumstances, a public employee, being paid public wages, is negotiating for private benefits against another public body. When release time



The activities performed by employees on release time are varied, and often bear no resemblance to the duties for which the employee was hired.

employees use release time to negotiate over wages and benefits, taxpayers are literally funding both sides of the negotiation with no seat at the table themselves.

Release time provisions in contracts are usually hard to spot. Unions draft innocuous language that many government officials gloss over. For example, the union contract between the City of Phoenix and the Phoenix police union created six full-time release positions by burying this language in a contract:

The six (6) full time release positions shall be sworn, full time, paid police officers of the Phoenix Police Department, who will at all times remain qualified to perform such duties as are normally expected and required of a municipal police officer in the City of Phoenix, Arizona. These six (6) full time release positions will receive their regular salary including fringe benefits, and the employer shall make all employer contributions to the Public Safety Personnel Retirement System required by law so as to maintain their full eligibility under the Public Safety Personnel Retirement System.²

It would be easy to pass over this language without realizing what it was truly creating.

In fact, more than one Phoenix councilmember has stated that's exactly what happened during their contract negotiations.

It would be easy to pass over this language without realizing what it was truly creating. In fact, more than one Phoenix councilmember has stated that's exactly what happened during their contract negotiations.

Release Time at All Levels of Government

Release time is practiced at every level of government—city, state, and federal. In Los Angeles, for example, the police union is gifted nine of LA's finest to do nothing but union work.³ Michigan permits release time at the state level for Michigan State Police.⁴ The federal government permits release time ("official time"), under 5 U.S.C. § 7131, where, in one example, the chronically understaffed Department of Veteran Affairs reported granting nearly a million hours of release time in one year, at a cost of over \$42 million to taxpayers, all for union activity.⁵ The practice is pervasive across the country.⁶

Estimates are that the total cost of release time in the U.S. is \$1 billion per year.⁷ In Phoenix alone, the cost is approximately \$3.7 million annually.⁸

Constitutional Challenges to Release Time

The Goldwater Institute filed a constitutional challenge to release time in Phoenix specifically targeting the contract between the city and the local police union. The police union contract was the focus of the lawsuit because it had the most egregious amounts of release time of all of the city's union contracts and it diverted resources from one of the most important functions the city provides.

In a significant victory, on January 24, 2014, Maricopa County Superior Court judge Katherine Cooper ruled in favor of taxpayer plaintiffs, finding release time unconstitutional, enjoining the practice in the contract with the police union and urging its application to all other public unions in Phoenix.⁹ The case is currently on appeal.

Although not every bad policy can be challenged as illegal, we have found that release time can be challenged under three different constitutional provisions: state gift clauses, state right-to-work clauses, and the First Amendment.

State Gift Clauses

Forty-seven state constitutions have what are known as “gift clauses”—some are called “anti-gift clauses” or “anti-donation clauses.”¹⁰ Generally, these clauses state that governments cannot give financial subsidies to private organizations. The Arizona Constitution’s gift clause, for example, reads, “Neither the state, nor any county, city, town, municipality, or other subdivision of the state shall ever give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation...”¹¹ Prevailing case law allows for two-side, arms lengths transactions, but subsidies are not permitted.

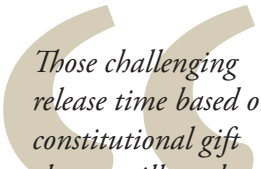
Those challenging release time based on constitutional gift clauses will need to examine their state’s gift clause and the associated jurisprudence to determine what types of government expenditures are banned. For example, the following inquiries may be important when performing a gift clause analysis based on Arizona’s gift clause jurisprudence.

Public Purpose

The most common question under the gift clause is whether the expenditure in question serves a public purpose. In some states, such as Arizona, the public purpose question is only the first hurdle for a government entity in defending its expenditure. In other states, however, the government wins if it can show a public purpose.

This can be a difficult question because many states have interpreted “public purpose” very broadly, granting governments wide discretion.

The first place to look for public purpose is the contract itself. The issue is determining what the union is obligated to do for the public. The union may point to a host of activities it has done over the years while on release time, which have benefited the public, but the relevant question is: What is the union obligated, under contract, to do for the public?



Those challenging release time based on constitutional gift clauses will need to examine their state’s gift clause and the associated jurisprudence to determine what types of government expenditures are banned.

Next, discovery can be conducted on what the union has actually done on release time. While it may be true that the union has done some things that benefited the public, it will have spent most of its time working toward its own ends (such as internal union meetings, filing grievances, union recruiting, political activity, etc.). A lack of accountability or limitations on the use of release time can make it difficult for governments to show a public purpose.

Unions may counter that representing a fellow employee in a disciplinary proceeding is a public benefit. Union members, however, pay dues in exchange for representation in disciplinary proceedings. Thus, when a union uses release time to fulfill legal obligations to union members, it is serving the union's own private interests .

Finally, the public is best served when an employee hired to do a job actually does the job the employee was hired to do. Pulling employees away from their duties to perform union work is, therefore, a quintessentially non-public purpose. This is even more pronounced in the case of police officers and firefighters who, when they go on release time, stop protecting the public in order to start protecting the union.

Pulling employees away from their duties to perform union work is, therefore, a quintessentially non-public purpose.

Adequacy of Consideration

The next step in the gift clause analysis is adequacy of consideration. Adequacy of consideration examines whether the government is participating in a fair, two-sided deal, or giving away too much, such that the government expenditure amounts to a subsidy.

Cost

To calculate the cost of release time to the public, simply multiply the total number of release time hours by the cost of each employee hour. The memorandum of understanding or employment contract will generally specify the total number of release time hours authorized. For example, if the contract grants the union one full-time release position at 2,080 hours per employee per year, and a discretionary bank of 500 hours, the government is giving 2,080 + 500, for a total of 2,580 annual release time hours.

Some provisions, however, grant unlimited amounts of release time. They rarely include the word "unlimited." Instead, they may look something like this one from Phoenix (which we verified granted unlimited release time by conducting depositions):

Up to two [Association] representatives may, when the Association is designated by the unit member as his representative, attend mutually scheduled grievance meetings, Use of Force Boards, Disciplinary Review Boards, IRP Meetings, and hearings with department representatives and hearings scheduled and conducted by the Civil Service Board without loss of pay or benefits.¹²

After calculating the total number of hours, look to the cost of each employee man hour. Averaging the annual cost of each employee eligible to use release time, and dividing it by 2,080, gives a rough estimate of the cost of each release time hour.

The government may provide a total cost of release. This total cost must be carefully evaluated for elements of release time that may not have been included. For example, Phoenix was calculating the cost of release time without considering the unlimited hours granted for representation in disciplinary proceedings.

It is important also to consider incidental costs, such as the cost of hiring replacement workers or paying overtime for employee A to cover the work of employee B who left his shift to go on release time.

Reciprocal Obligations


The next consideration is what the union is required to do for the government in return for release time. Again, look to the contract itself for legally enforceable obligations. Beware of loose language that permits the union to do things (e.g., “The Association may represent unit members in disciplinary proceedings”) but does not obligate them to do so.

Generally, release time is granted without strings attached. Governments are loath to interfere in internal union business and in fact may not be able to do so under the law. Thus, they tend to shy away from restricting union functions, even on publicly-funded release time.

Next, consider whether the union’s obligations are pre-existing obligations. Many times, the union will include a no-strike clause that prohibits the union from striking. But striking by public employees is almost always against the law, so that cannot count as a legal consideration.

Similarly, if the contract requires union members to use release time to do something that the employer could have required the union member to do as an employee (without release time), then it is a pre-existing obligation that cannot count as consideration. For example, if an officer on release time is travelling to a union function in his uniform and patrol car then responds to a crime he witnesses, that action does not qualify as a public benefit provided by release time. The officer’s response to public safety is a pre-existing obligation as an employee of the police force, and does not legally justify the issuance of release time.

Further, in Arizona, “indirect” benefits are not counted as consideration for gift clause purposes. Hence, such niceties as labor/management harmony or efficiency do not



Governments are loath to interfere in internal union business and in fact may not be able to do so under the law.

satisfy this part of the judicial inquiry.¹³

Control

Another question that may arise, possibly falling under the consideration analysis, is the degree of control that the government retains over the expenditure—in this case the employees that go on release time.

In the Goldwater Institute’s case we discovered that full-time release employees reported to the union hall, did not report to a government supervisor, had the authority to resist any and all assignments from the government, did not have to undergo annual evaluations, and did not have to report their activities to the government. For employees on part-time release, the control was nearly as low, though at times they did have to report to their supervisor what activities they were going to do on release time before being allowed to leave their post.

Evaluation of Cost and Benefit

Because governments chronically fail to account for how release time is used, they usually cannot determine whether the expenditure yields dividends to the government.

Finally, under the gift clause analysis, it may be relevant to determine whether the government is able to evaluate the benefit of the expenditure. Because governments chronically fail to account for how release time is used, they usually cannot determine whether the expenditure yields dividends to the government. If the release time employees are not required to account for how they use their time, then the government cannot determine the value.

However, it should be noted that even if the government can track what is done on release time, and even if the union does provide some public benefit, this should not supplant the more relevant question of what the union is specifically obligated to do for the public.

Union Defenses

Unions will typically defend release time by arguing something along the following:

Taxpayers do not pay for release time. Rather, the employees themselves bear the cost. When a union contract is negotiated, the employer gives the employees a large financial pie. And it is up to the employees to decide how to divide it. If employees choose to cut up the pie in a way that gives money to the union for release time instead of giving more money to their own salaries, then that is their decision. Therefore, it is the employees, not the public employers, who are paying for release time.

This argument has many shortcomings and did not survive judicial scrutiny in the

Goldwater Institute's legal challenge to release time.

First, if the government is still writing the checks to release time employees (which they are), then taxpayers are paying. Plain and simple.

Second, this argument mischaracterizes how negotiations typically work. The public union may try to argue that these employees have a right to receive a 1.5 percent increase in salaries and that the union has the prerogative to accept only a 1.4 percent increase in order to direct some money toward release time. Employees, however, do not have a guaranteed and finite "right" to anything during negotiations. Employees have no property interest in a proposed 1.5 percent salary increase. For example, if the 1.5 percent proposal were decreased to 1 percent during negotiations, the employees could not claim that .5 percent was stolen from them.

Thus, if the union does not have a property interest in proposed compensation, they cannot be said to be "giving" part of their compensation to the union during negotiations—they never had anything in their possession to give away. The only way release time can be "purchased" by employees is if they pay for it with their dues. Thus, the union cannot defeat a gift clause challenge by saying the union is the entity funding release time.


Right-to-Work Violations

If a union contends that the employees, rather than the government agency, are paying for release time, the union walks directly into a harmful legal admission in states that have right-to-work laws.

Dozens of states have enacted right-to-work laws, offering employees different levels of protection against coercive union practices, including the right not to join a union and the right not to pay mandatory union dues.¹⁴

If the employees themselves, rather than the government, pay for release time, then it means all employees bound by that contract are paying for release time. That includes employees who, if the state has right-to-work laws, choose to not be part of the union.¹⁵ But in many right-to-work states, employees not only cannot be forced to be part of the union or pay union dues, but they also cannot be forced to pay any type of financial compensation to unions. Therefore, if some employees choose to not be part of the union but are still having to give up pay and benefits to fund union activity (via release time), then their right-to-work protections are being infringed.

In these states, therefore, union defendants either cannot raise the "it is all part of the employee compensation pie" argument, or they will concede right-to-work violations.



Dozens of states have enacted right-to-work laws, offering employees different levels of protection against coercive union practices, including the right not to join a union and the right not to pay mandatory union dues.

In such a case, representing non-union workers should bring release time to a halt, or at least require an individual opt-out.

First Amendment Challenge

In *Knox v. SEIU*, the United States Supreme Court ruled that non-union employees, who may nonetheless be represented by the union, must have an opportunity to opt out of supporting a union's political activity.¹⁶

If employees are giving up part of their compensation to unions, then the employees are financially supporting any and all of the political activity that the union does on release time. Moreover, if the union is directing dues revenue toward political activity instead of to payroll costs (because the release time already covers its payroll costs), then it could be argued that employees are funding the political activity done with dues revenue as well. Such a prohibition might also extend to lobbying activities, including ballot measures, with which employees disagree.

If employees are giving up part of their compensation to unions, then the employees are financially supporting any and all of the political activity that the union does on release time.

Therefore, like the right-to-work issue, if unions argue that release time is part of overall compensation and paid for by all employees, and if the union uses release time for political activity, then there is a probable First Amendment violation. In other words, this “defense” simultaneously concedes a constitutional violation.

Legislative Activities

Prohibitions against or restrictions on release time can be enacted at the state level or added to city charters. Release time for school employees was banned in Arizona. Release time can be limited to certain specified purposes, the union can be required to reimburse the government for release time, or it can be prohibited altogether. The principle that all taxpayer dollars should be used for public rather than private purposes is an obvious one that already is reflected in many state constitutions through their gift clauses.

In Arizona, state legislative efforts to ban or limit release time at the city level were stymied by a handful of Republican legislators who believe public safety unions are Republican unions. In such circumstances, judicial remedies are essential.

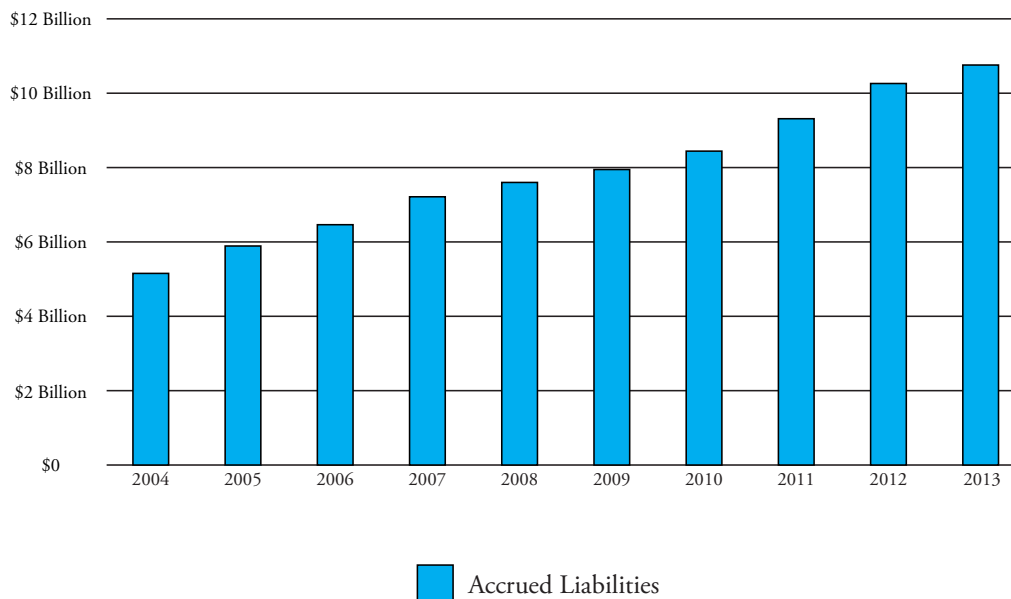
PART II: PENSION SPIKING

Unfortunately, abuse of taxpayer resources does not end with release time. Pension spiking is yet another area where public unions and their collaborators in city hall are exploiting public compensation.

What is Pension Spiking?

Pensions for most public employees are based on a formula that includes the number of years worked and an average of the highest few years of salary preceding retirement. There is, therefore, both a time factor and a salary factor that each impact an employee's retirement. The time factor is often categorized as years of service. The salary factor is referred to as final average salary.

Public Safety Personnel Retirement System of the State of Arizona Accrued Pension Liabilities

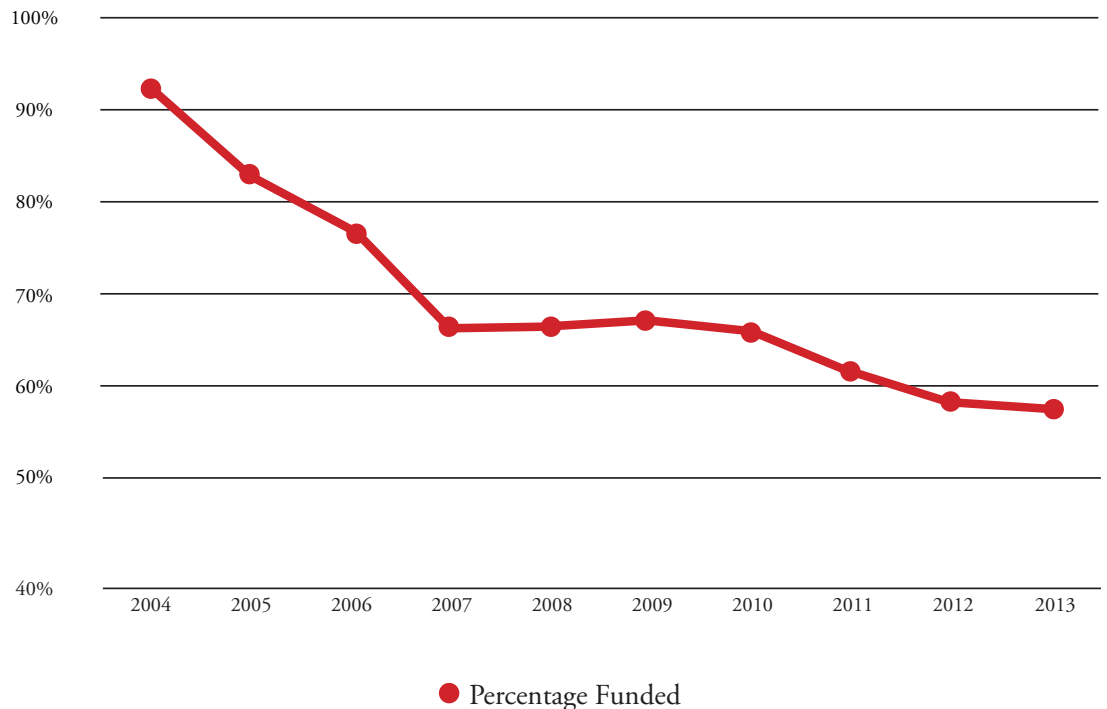


Unfortunately, abuse of taxpayer resources does not end with release time. Pension spiking is yet another area where public unions and their collaborators in city hall are exploiting public compensation.

Source: pg. 81, Public Safety Personnel Retirement System, 45th Comprehensive Annual Financial Report, A Pension Trust Fund of the State of Arizona, For Fiscal Year Ending June 30, 2013

For example, if an employee works for 20 years, and the employee's final average salary at the end of his career is \$100,000, then the employee may have a pension worth half that amount, or \$50,000. If an employee is credited with working more than 20 years, or has a higher average salary during the last few years of employment, the employee's pension will increase.

PSPRS Unfunded Liabilities Ratio



Source: pg. 81, Public Safety Personnel Retirement System, 45th Comprehensive Annual Financial Report, A Pension Trust Fund of the State of Arizona, For Fiscal Year Ending June 30, 2013

State and local governments allow public employees to cash in sick leave and vacation leave, often accrued over the course of an entire career, during the employee's final few years.

Pension spiking is a practice in which that formula is manipulated, either by artificially increasing credit for years of service (i.e., the “time factor”), or by increasing “final average salary” at the end of an employee’s career.

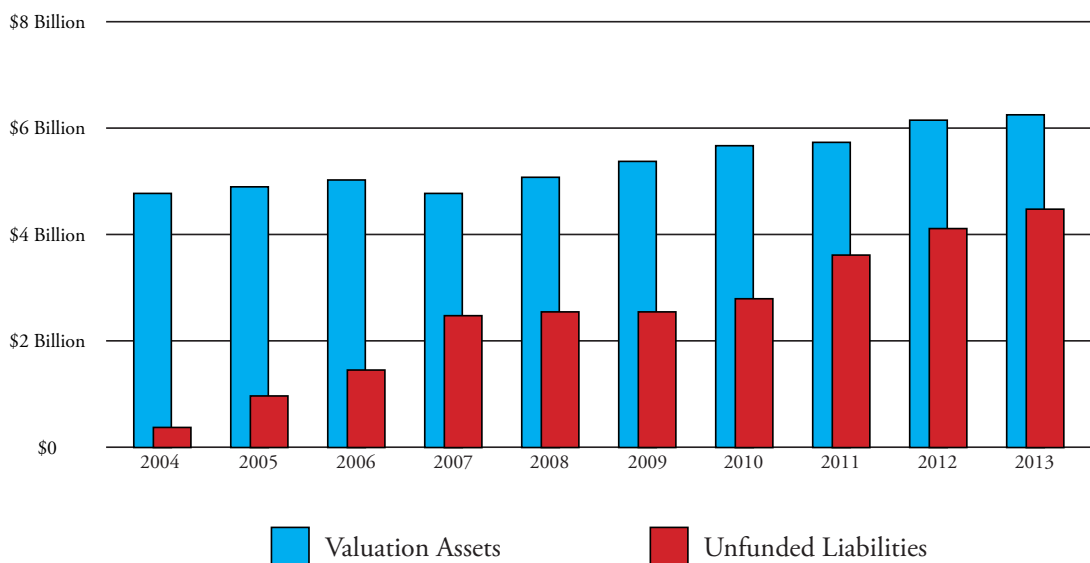
Pension spiking can occur in dozens of ways. For example, some state and local governments apply overtime hours to total years worked, thus increasing the time factor so an employee’s years of service are artificially increased. Other government agencies may permit their employees to include leave and allowances not ordinarily intended to impact retirement in their final years, thus increasing their final average salary and pensionable pay.

Most commonly, state and local governments allow public employees to cash in sick leave and vacation leave, often accrued over the course of an entire career, during the employee’s final few years. These lump-sum payments will then count toward the employee’s final average salary, increasing that employee’s pension payments. In addition to employees working large amounts of overtime for which they receive both regular salary and pension earnings, these items create the greatest bulk pension spiking costs.

Unfortunately, pension manipulations do not end with vacation leave, sick leave, or overtime. Uniform or clothing allowances, education pay, termination pay, longevity pay, training incentives, transportation allowances, and others have been added to the salary component.¹⁷ Amazingly, some public employees have even attempted to use wages earned while they are on release time to spike retirement benefits.¹⁸

Either to avoid statutes prohibiting pension spiking, or to obscure the practice, public agencies have also come up with crafty mechanisms to inflate employees' final average salaries without directly cashing in accrued leave or allowances. Some governments permit employees to "convert" unused sick leave, vacation leave, and uniform allowances into salary during their final years of employment.¹⁹ In other words, rather than a lump-sum payment that counts toward retirement, employees can convert future vacation time, sick leave, uniform allowance payments, and other benefits into additional pay, thereby inflating the employee's final average salary and pension.

PSPRS Actuarial Valuation of Assets vs. Unfunded Liabilities



Amazingly, some public employees have even attempted to use wages earned while they are on release time to spike retirement benefits.

Source: pg. 81, Public Safety Personnel Retirement System, 45th Comprehensive Annual Financial Report, A Pension Trust Fund of the State of Arizona, For Fiscal Year Ending June 30, 2013

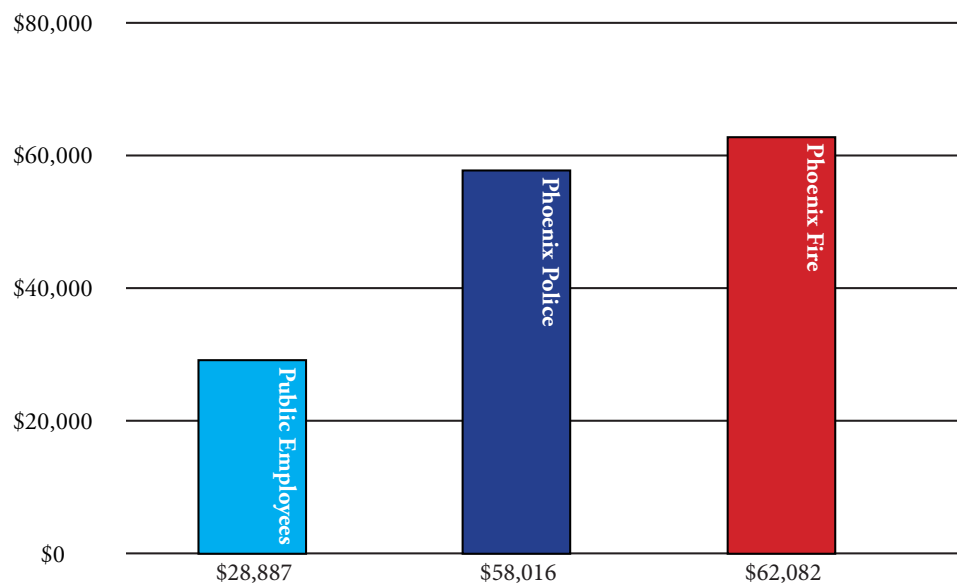
As a result of these numerous pension manipulations, pension spiking is no longer a problem on the margins of the larger debate over unfunded pension liabilities.²⁰ It is rather a front-and-center example of the abuses within public retirement systems. And, regrettably, the practice is occurring in state and local public agencies across the country.

The most common forms of pension spiking – inflating final average salary by cashing in vacation leave, sick leave, and receiving pensionable overtime pay – are permitted by state law or judicial decision in at least 34 states, and very likely occur in many more cities across the country.²¹

Of course, given the large number of methods by which states and cities allow and obscure pension spiking practices, these numbers do not tell the whole story. In fact, this is state-level data for the three most common types of pension spiking methods only. More often than not, pension spiking occurs at the municipal level. And even at the municipal level, spiking may be permitted among one class of employees (e.g., public safety workers), but not among another class (e.g., administrative support employees). Further, pension spiking practices may not be codified in either state statute or municipal ordinance. Rather, they commonly appear in memoranda of understanding between municipalities and public labor unions.²²

Pension spiking practices may not be codified in either state statute or municipal ordinance. Rather, they commonly appear in memoranda of understanding between municipalities and public labor unions.

Average Annual Phoenix Pensions



Source: Public Employees (excludes police & firefighters). Pension Reform City Council Meeting slide presentation
 Police & Fire: azcentral.com/community/phoenix/articles/201305031leaders-see-pension-fixes-differently.html

Pension spiking in many municipalities has resulted in some truly outrageous outcomes.

In Phoenix, an assistant fire chief received an annual pension of \$130,406 after exchanging \$110,877 in sick leave, \$14,528 in vacation time, and \$43,152 in deferred compensation. In addition, the fire chief participated in a deferred retirement program that allowed him to receive \$795,093 in cash at the time of retirement. After leaving Phoenix, the same assistant fire chief was hired by another city in Arizona as their fire chief, where he received an annual salary of \$145,000.²³

In Allegheny County, Pennsylvania, a county jail employee inflated his final average salary from \$56,000 to \$140,000 per year by working large amounts of overtime. As a result, the county employee walked away with a \$92,000 pension, nearly twice his actual highest salary at the time of retirement.²⁴

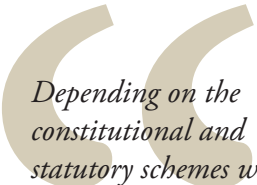
In one particularly troubling case, retiring workers in the Contra Costa, California Sanitary District boosted their pensions by cashing in unused sick leave, longevity pay, and even a “cafeteria plan” allowance despite appellate case law prohibiting such conversions. The former general manager of the district boosted his pension by more than \$50,000, or 22 percent, by manipulating his final pay. As a result of cost of living adjustments, the general manager’s current pension is \$275,240, more than he earned while employed at the district.²⁵

Given the wide variety of ways in which pension spiking occurs, determining the prevalence of pension spiking within your jurisdiction through public-records requests under state open records laws to is a good starting point. These may be submitted to state and local pension funds and government employers. Relevant information to request includes all statutes, ordinances, memoranda of understanding, policies, or practices that permit using certain components of compensation as pensionable pay. Employee pay records that provide an itemization of specific components of compensation are also helpful. These records should reveal, at least broadly, the pervasiveness and impact of pension spiking within your jurisdiction.

Depending on the constitutional and statutory schemes within a particular state, different strategies may be available to limit or end pension spiking.

Strategies to End Pension Spiking

A successful strategy to end pension spiking will be driven in large part by the statutory and constitutional protections available in your jurisdiction. In general, legal challenges to the practice will be in one of two forms: (1) statutory or enforcement actions, and (2) state gift clause constitutional challenges. Subsequent to or concurrent with these legal challenges, legislative remedies may also be pursued.



Depending on the constitutional and statutory schemes within a particular state, different strategies may be available to limit or end pension spiking.

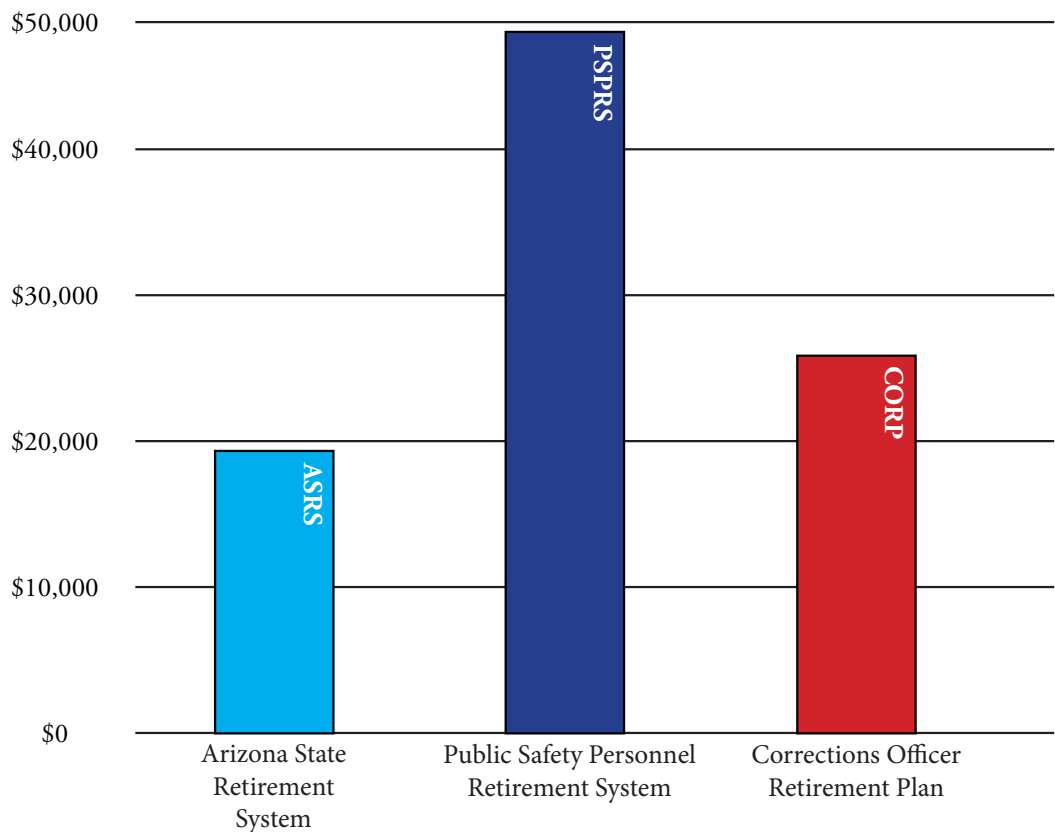
Statutory and Enforcement Challenges

Many states not only have statutes that permit pension spiking, but also have clear statutory provisions that prohibit certain components of compensation from being used to inflate an employee’s years of service or final average salary. In areas where the statutory provisions are not perfectly clear, state courts have on occasion prohibited certain types of spiking. In both of these circumstances, civil actions may be brought to challenge pension spiking practices at the state and local levels.

On August 15, 2013, the Goldwater Institute filed suit against the City of Phoenix and the senior police officer union seeking declaratory and injunctive relief to end pension spiking in Arizona’s largest city. The Institute later added the local pension board and the

On August 15, 2013, the Goldwater Institute filed suit against the City of Phoenix and the senior police officer union seeking declaratory and injunctive relief to end pension spiking in Arizona’s largest city.

Average Annual Arizona Public Pension Benefit



Source: pg. 7. *Arizona’s Pensions: On track to financial sustainability with retirement security*, Dane Wells & Steven Herzenberg, Jan. 27, 2014

state pension board to the litigation.²⁶

The challenge in Phoenix was brought on purely statutory grounds. Because the State of Arizona administers the pension fund, the Public Safety Personnel Retirement System (“PSPRS”), Arizona law defines which components of compensation are and are not pensionable. State law prohibits public employees from using “unused sick leave, payment in lieu of vacation, payment for unused compensatory time or payment for any fringe benefits” to increase compensation for pension purposes.²⁷ Despite this, Phoenix entered into memorandums of understanding with several public unions that permitted employees to receive pensionable payments in lieu of accrued sick leave, vacation leave, compensatory time, and other fringe benefits, including payment for uniform allowances. Phoenix then incorporated these unlawful payments into their payroll practices. These added monthly payments were used to spike final average salary for pension calculations.

Given the statutory scheme in Arizona, the Goldwater Institute’s lawsuit, therefore, seeks to enforce the plain language of state statute. The goal of the litigation is to end pension spiking in Phoenix and prevent other municipalities in the state from circumventing state law by allowing city employees to add these unlawful components of compensation to their pension checks.

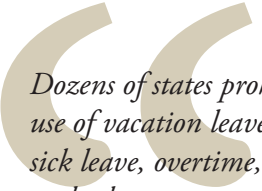
Similar actions may be brought in states where the law clearly prohibits specific types of pension spiking. Dozens of states prohibit use of vacation leave, sick leave, overtime, and other components of compensation to increase retirement benefits either expressly by statute or by judicial decision.²⁸

In addition to statutory challenges, enforcement actions may also be brought in states where courts have specifically prohibited certain types of pension spiking. Although prevailing case law may prevent pension spiking, municipalities and public unions may be unaware of the prevailing law, or attempt to circumvent it. Challengers, therefore, may have a cause of action to enforce existing court orders enjoining pension spiking or declaring the practice unlawful.

Gift Clause Challenge

State constitutional gift clause provisions prohibit public gifts or subsidies to private individuals or associations. Nearly all state constitutions have gift clauses, but some state courts have provided more robust protection against questionable public expenditures than others.²⁹

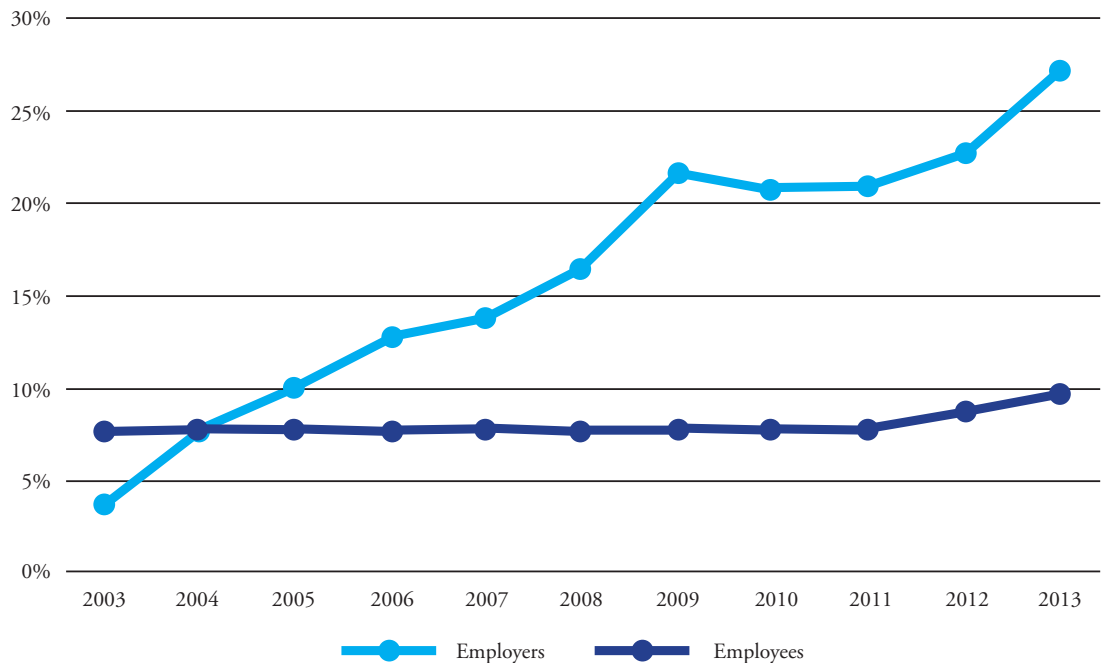
For example, some states require only a “public purpose” in order to survive a gift clause challenge. In these states, the government need only show that the government expenditure is designed to promote a public interest, even if it confers incidental



Dozens of states prohibit use of vacation leave, sick leave, overtime, and other components of compensation to increase retirement benefits either expressly by statute or by judicial decision.

private advantages. When courts have held that pension payments are part of overall compensation, rather than a gratuity, in the context of public pensions, the public purpose test may be easily satisfied.

Arizona PSPRS Contribution Rate



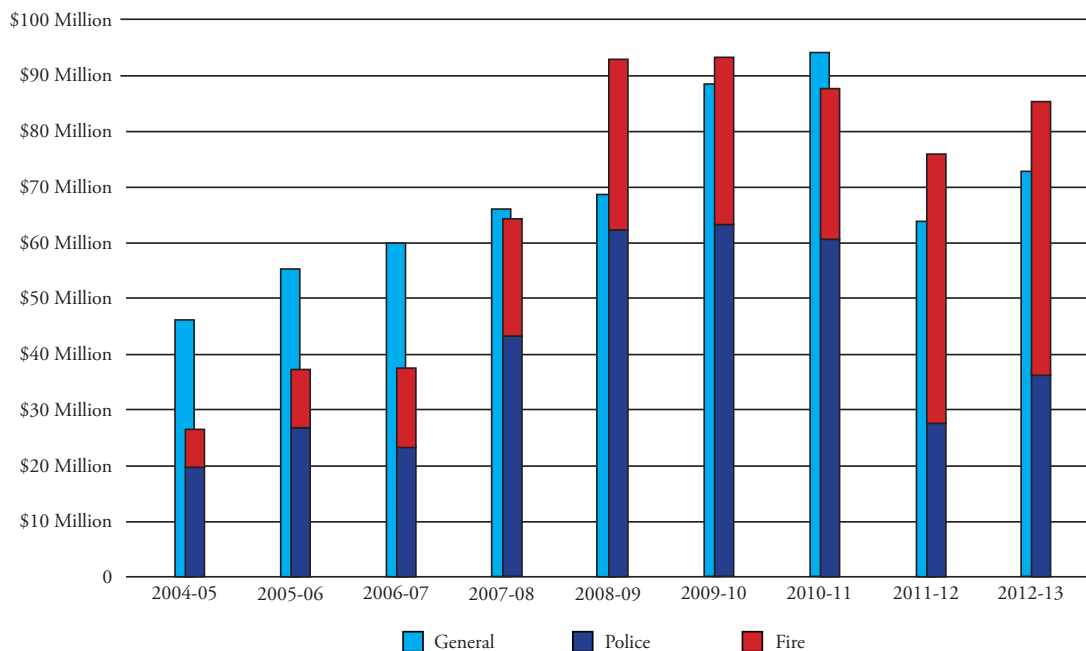
When courts have held that pension payments are part of overall compensation, rather than a gratuity, in the context of public pensions, the public purpose test may be easily satisfied.

Source: Arizona's Pensions: On Track to Financial Sustainability with Retirement Security, by Dave Wells and Stephen Herzenberg, January 27, 2014

Even still, potential challengers may tease out the purpose of providing the component of compensation from its use in increasing retirement benefits. For example, there may be valid public purposes for public expenditures on sick leave for employees, such as a healthy workforce. However, those purposes are not served when the expenditure is used to enhance retirement benefits. An employee who uses a sick leave day to maintain his current level of compensation is quite different from an employee who adds that sick leave day to his salary specifically to increase retirement benefits. While there may be a valid public purpose for the former use, the benefit of the latter use accrues only to a private individual.

In addition to a public purpose, gift clauses in many states also require adequate consideration. Generally, this means there must be some bargained-for exchange for the public expenditure. Moreover, "consideration is what one party to a contract obligates itself to do (or to forbear from doing) in return for the promise of the other contracting party."³⁰

Employee Benefits--Phoenix Pension Contribution



Source: Phoenix City Detail Budgets

In Arizona's seminal gift clause case, the Arizona Supreme Court held that any public payment which is "grossly disproportionate" to what is received in return violates the gift clause.

The consideration must be adequate. In Arizona's seminal gift clause case, the Arizona Supreme Court held that any public payment which is "grossly disproportionate" to what is received in return violates the gift clause.³¹ For example, the government could not spend \$5 million to repair a sewer line if other bidders were willing to do the job for \$5,000.³² Such an expenditure would result in a subsidy to the contractor.

In the context of pension spiking, the public expenditure for the increased retirement benefits is grossly disproportionate to the value received. Returning to our sick leave example, assume one day of sick leave is worth \$200. The government may spend \$200 for a single day of sick leave, and receive proportionate value when an employee uses that day to maintain current compensation when ill and away from work. However, assume the same employee saved up and then cashed in that sick leave day to increase the employee's final average salary. If the employee's pension were based on just 50 percent of the employee's salary then the government would spend that same \$200 in just the first two years of the employee's retirement. Since many public employees receive pensions for decades, a 40-year retirement, for example, would result in a public expenditure of \$4,000 for the same sick leave day—20 times the value of that single workday! That public expenditure, by definition, is grossly disproportionate to what is received in return.

Since several states require the value received in return for the public expenditure to be roughly proportionate, successful gift clause challenges can be mounted based on the consideration prong.³³

Legislative Fixes

Many examples of pension spiking are truly outrageous, and can gain immediate media interest. For example, a recently retired city manager in Phoenix, David Cavazos, was able to artificially inflate his annual salary of \$315,000 (which was itself raised by \$80,000 less than two years before he retired) by at least \$300,000. He did so by cashing in a lump-sum payment of \$200,000 for unused sick leave he accrued before becoming city manager, \$42,000 in unused vacation pay, a \$21,600 vehicle allowance, as well as a \$1,200 yearly cell phone allowance.³⁴ Similarly, Former Phoenix assistant fire chief Bobby Ruiz, cashed in \$110,877 in sick leave, \$14,528 of vacation time, and \$43,152 in deferred compensation benefits to spike his pension.³⁵ In addition to the inherent unfairness of pension spiking in general, these real-world examples often result in public and editorial condemnation of the practice. Legal cases challenging pension spiking can highlight these abuses, and therefore, can also drive legislative change.

Pension spiking abuses clearly undermine the public's confidence that government compensation is fair and transparent.

Legislative fixes can be accomplished at both the state and local levels. For state pension funds that include municipal employees, appeals can be made directly to the legislature. Statutes will often specifically define what counts as compensation and what does not. In Arizona, for example, vacation leave, sick leave, compensatory time, and other fringe benefits are excluded from the definition of compensation for all public safety workers in the state.³⁶ Overtime pay, however, is not excluded. Therefore, this statute can be easily amended to exclude overtime pay from the definition of compensation.³⁷

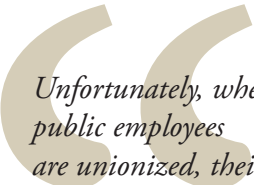
Similarly, city pension funds can be changed at the municipal level, either through city council action, or direct referendum of the voters.³⁸ It should be noted, however, that city councils may be beholden to the public unions that provide substantial support to get certain members elected. Additionally, at public hearings on pension reform, the loudest voices are often those of the union members themselves—regularly appearing at council meetings to lobby for more tax dollars while on taxpayer-funded release time.

Pension spiking abuses clearly undermine the public's confidence that government compensation is fair and transparent. As a result, legal challenges aimed at ending the practice can also result in swift legislative change.

Conclusion

All public employees owe a fiduciary responsibility to the citizens they are supposed to serve. Unfortunately, when public employees are unionized, their representatives owe a duty to their members' private interests, which creates an inherent tension with public employees' fiduciary responsibilities.

The relationship between public employers and public unions is notoriously symbiotic. Union dues paid by public employees often finance state and local politicians who sign public contracts conferring lavish benefits on the very same unions that got them elected. Of the many abuses to emerge from this "collaborative enterprise," taxpayer-funded release time and pension spiking are among the worst. Release time provides taxpayer dollars for purely private activities—in many cases taxpayer-funded lobbying activities aimed at seeking more taxpayer funds for government workers. Pension spiking costs taxpayers millions, strains already underfunded pension systems, creates inequities among pensioners, and leads many to conclude that compensation for public employees is inherently unfair. Fortunately, recent success in Arizona provides a roadmap to limit or end these abusive practices elsewhere. The efforts in Arizona may just be the beginning of a campaign to restore sanity and fiscal discipline in public agencies throughout the country.



Unfortunately, when public employees are unionized, their representatives owe a duty to their members' private interests, which creates an inherent tension with public employees' fiduciary responsibilities.

References

1. Craig Harris and Beth Deckett, “Legality of Boosting Phoenix Pensions in Question,” *Arizona Republic*, May 8, 2013, <http://www.azcentral.com/news/arizona/articles/20130410phoenix-legality-boosting-pensions-question.html>.
2. Memorandum of Agreement, City of Phoenix and Phoenix Law Enforcement Association, 2012-2014, §1-3(B)(1)(a) (May 3, 2012) (“PLEA MOA”).
3. Memorandum of Understanding, City of Los Angeles and Los Angeles Police Protective League, 2011-2014, art. 2.6 (July 1, 2011).
4. See Appendix A.
5. Diana Furchtgott-Roth, “Hundreds of VA Employees Working for Union on Taxpayers’ Dime,” *Washington Examiner*, Jun. 11, 2013, <http://washingtonexaminer.com/diana-furchtgott-roth-hundreds-of-va-employees-working-for-union-on-taxpayers-dime/article/2531611>.
6. See also Collective Bargaining Agreement, Las Vegas Metropolitan Police Department and Las Vegas Police Protective Association, 2011-2013, art. 5.1 (July 1, 2011); Labor Agreement, Portland Police Association, City of Portland, 2010-2013, art. 10 (July 1, 2010); Memorandum of Agreement, City of Jacksonville and Jacksonville Consolidated Lodge No. 5-30 of the Fraternal Order of Police, 2003-2005, art. 3.3 (October 1, 2003); State Police Bargaining Unit Contract, State of Connecticut and Connecticut State Police, 2007-2010, art. 7, § 7 (July 1, 2007); Memorandum of Understanding, Salt Lake City and American Federation of State, County, and Municipal Employees, Local 1004, 2013-2016, art. 6 (June 23, 2013); Memorandum of Understanding, Baltimore County Administration and Baltimore County Federation of Public Employees, 2010-2012, § 2.3 (July 1, 2010).
7. Mallory Factor, “How Public Unions Exploit the Ruse of ‘Official Time,’” *Wall Street Journal*, Oct. 1, 2012, <http://online.wsj.com/news/articles/SB10000872396390443324404577591291764710060>. See also Mark Flatten, “Federal Employee Unions Use Tax-Funded Official Time, Money to Building Political Muscle,” *Washington Examiner*, Feb. 5, 2013, <http://washingtonexaminer.com/federal-employee-unions-use-tax-funded-official-time-money-to-build-political-muscle/article/2543269> (noting that federal official time alone costs taxpayers an estimated \$155.6 million in fiscal year 2011, the most recent year for which statistics are available).
8. Mark Flatten, “Money for Nothing: Phoenix Taxpayers Foot the Bill for Union Work,” *Goldwater Institute*, Sept. 21, 2011, <http://goldwaterinstitute.org/article/money-nothing-phoenix-taxpayers-foot-bill-union-work>.
9. Under Advisement Ruling Granting Pl.’s Mot. Permanent Injunction, Maricopa County Superior Court, CV 2011-021634, Jan. 24, 2014.
10. See note 26, *infra*.
11. ARIZ. CONST. art. IX, § 7.
12. PLEA MOA, §1-3(B)(2).
13. *Turken v. Gordon*, 223 Ariz. 342, 350, 224 P.3d 158, 165 (2010).
14. NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, RIGHT TO WORK STATES (2012), <http://www.nrtw.org/rtws.htm>.
15. Union contracts are negotiated for a unit of employees (such as police officers or all firefighters). All employees are part of the bargaining unit, but not all employees are necessarily part of the union that represents the employees.
16. 132 S.Ct. 2277 (2012).
17. See, e.g., CAL. GOV’T CODE § 31461.45 (permitting uniform or clothing allowances in pensionable earnings); *Golinvaux v. City of Dubuque*, 439 N.W.2d 196 (Iowa 1989) (holding that educational pay, which amounts to a fixed percentage increase in wage base upon earning specified educational credits should be included by the pension board as “earnable compensation” in the calculation of retirement benefits); *Milette v. N.H. Retirement System*, 683 A.2d 531 (N.H. 1996) (holding that retiree’s severance pay was improperly excluded from calculation of her retirement benefits); *Longley v. St. Employees Retirement Com’n*, 931 A.2d 890 (Conn. 2007) (holding that

- lump sum longevity payments are to be added to the base salary while calculating pensions); KY. REV. STAT. § 67A.360(19) (training incentive pay including in pensionable salary); *Hitchcock v. Wash. St. Dep't of Retirement Systems*, 692 P.2d 834 (Wash. App. Div. 3 1984) (holding that transportation allowance paid an employee is included in “earnable compensation” for purposes of calculating employee’s retirement benefits).
18. See, e.g., *Kirsch v. Public School Employees’ Retirement Bd.*, 985 A.2d 671 (Pa. 2009) (finding that school district retirees were not permitted to include higher union release time salaries when calculating final average salary for pension purposes).
 19. See Memorandum of Agreement, City of Phoenix and Phoenix Police Sergeants and Lieutenants Association, 2012-2014, §§ 3-1D, 3-4(B)(5), 5-5(L) (April 24, 2012) (“PPSLA MOA”).
 20. See, e.g., *The Widening Gap Update* (The Pew Center on the States), Jun. 2012, at 1, available at http://www.pewstates.org/uploadedFiles/PCS_Assets/2012/Pew_Pensions_Update.pdf (Finding that state pension funds have a \$757 billion unfunded liability for fiscal year 2010, the most recent year for which data is available); *A Widening Gap in Cities: Shortfalls in Funding for Pension and Retiree Healthcare* (The Pew Center on the States), Jan. 2013, at 2, available at http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Retirement_security/Pew_city_pensions_report.pdf (Finding a \$99 billion unfunded liability for 61 major U.S. cities in fiscal year 2009, the most recent year for which data is available).
 21. See ALA. CODE §§ 16-25-11.1(a); 16-25-1(17), 36-26-36(a); 36-27-1(14), 45-8A-22.115(a); *Crum v. Stalnaker*, 936 P.2d 1254 (Alaska 1997); ARIZ. REV. STAT. §§ 38-769(M)(b), 38-842(12), 38-881(42); *Santa Monica Police Officers Assn. v. Bd. of Admin. of the Public Employees’ Retirement System*, 69 Cal. App. 3d 96 (Cal. Ct. App. 1977); *Rose v. City of Hayward*, 126 Cal. App. 3d 926 (Cal. Ct. App. 1981); *Purdie v. Jarrett*, 152 S.E.2d 749 (Ga. 1966); HAW. REV. STAT. § 88-63; IDAHO CODE ANN. § 67-5333(2); ILL. COMP. STAT. § 5/15-113.4 (1997); ILL. COMP. STAT. § 105/14a (2003); IND. CODE §§ 5-10.4-4-7; 5-10.2-4-3(e); 21-38-1-2; IOWA CODE § 70A.23; LA. REV. STAT. ANN. § 17:425; MD. CODE ANN. § 20-206; MISS. CODE ANN. §§ 21-29-321; 25-11-103; MO. ANN. STAT. § 104.601; *Halpin v. Neb. St. Patrolmen’s Retirement Sys.*, 320 N.W.2d 910 (Neb. 1982); NEV. REV. STAT. § 284.355(4); N.C. GEN. STAT. § 115C-302.1(d); N.D. CENT. CODE §§ 39-03.1-30, 54-52-27; OKLA. STAT. ANN. tit. 47, § 2-307.2; *Oregon St. Police Officers’ Ass’n v. State*, 918 P.2d 765 (Or. 1996); *Duvall v. South Carolina Budget & Control Bd.*, 659 S.E.2d 125 (S.C. 2008); TENN. CODE ANN. § 8-34-604(a)-(b); (TEX. GOV’T CODE ANN. §§ 813.509, 823.403(a); VT. STAT. ANN. tit. 3, § 455(a)(4)(C); *Bowles v. Wa. Dep’t of Retirement Sys.*, 847 P.2d 440 (Wash. 1993); *Hudkins v. St. Consol. Public Retirement Bd.*, 647 S.E.2d 711 (W. Va. 2007) (quoting W. VA. CODE § 5-10-15a (1988)); *Szudora v. Town of Fairfield*, 573 A.2d 1 (Conn. 1990); FLA. STAT. § 121.021(22)(a); HAW. REV. STAT. § 88-21.5(a)-(b); KY. REV. STAT. ANN. § 67A.360(19); *Stover v. Retirement Bd. of City of St. Clair Shores Firemen & Police Pension Under Act 345, Public Acts 1937*, 260 N.W.2d 112 (Mich. App. 1977); MINN. STAT. § 352.01(13)(b); N.H. REV. STAT. ANN. § 100-A:1(XVII); N.Y. GEN. MUN. LAW § 90; OHIO REV. CODE ANN. § 742.01(L)(1); OR. REV. STAT. § 238A.130(4); *Palyok v. Borough of West Mifflin*, 586 A.2d 366 (Pa. 1991); VT. STAT. ANN. tit. 3, § 455(a)(27); WASH. REV. CODE §§ 41.32.010(14)(b), 41.40.010(8)(b); See *Flisock v. St., Div. of Retirement & Benefits*, 818 P.2d 640 (Alaska 1991); *Ventura County Deputy Sheriffs Ass’n v. Bd. of Retirement*, 16 Cal. 4th 483 (1997); *Longley v. St. Employees Retirement Com’n*, 931 A.2d 890 (Conn. 2007); LA. REV. STAT. ANN. §§ 11:3684, 42:421; MONT. CODE ANN. § 19-3-108(6)(b); *Kranker v. Levitt*, 30 N.Y.2d 574 (1972); *Weber v. Levitt*, 344 N.Y.S.2d 381 (3d Dep’t 1973), order summarily aff’d, 316 N.E.2d 327 (N.Y. 1974); *Kennedy v. S.C. Retirement Sys.*, 549 S.E.2d 243 (S.C. 2001); TEX. GOV’T CODE ANN. § 813.511).
 22. See, e.g., PSLA MOA, §§ 3-1D, 5-5(L); PLEA MOA, §§ 3-4(B)(5), 3-4B, 5-5(J); Memorandum of Agreement, City of Phoenix and Phoenix Firefighters Association Local 493, 2012-2014, §§ 3-4, 5-5(E) (April 25, 2012).
 23. Beth Duckett and Craig Harris, “Rising Arizona Public Safety Pensions Strain Budgets,” Arizona

- Republic, May 8, 2013, <http://www.azcentral.com/news/politics/articles/20130502arizona-public-safety-pensions-strain-budgets.html>.
24. “Some Allegheny County Employees Accused of ‘Pension Spiking,’” CBS Pittsburgh, Dec. 27, 2013, <http://pittsburgh.cbslocal.com/2013/12/27/some-allegheny-county-employees-accused-of-pension-spiking>.
 25. Daniel Borenstein, “Retired Sanitary District Manager’s \$50,000-a-year Spike Shows What’s at Stake in Pension Litigation,” *Contra Costa Times*, June 28, 2013, http://www.contracostatimes.com/ci_23556226/daniel-borenstein-retired-sanitary-district-managers-50-000#.
 26. First Amended Complaint, *Wright, et al. v. Stanton, et al.*, No. CV2013-010915 (Super. Ct. Maricopa County filed Oct. 8, 2013).
 27. ARIZ. REV. STAT. § 38-842(12).
 28. See, e.g., ARIZ. REV. STAT. § 38-842(12); COLO. REV. STAT. § 24-51-101(42)(B); HAW. REV. STAT. § 88-81; IOWA CODE § 97B.1A(26)(A)(2); *City of Covington v. Bd. of Trustees of the Policemen’s & Firefighters’ Retirement Fund of the City of Covington*, 903 S.W.2d 517 (Ky. 1995); *Wash. Fed’n of State Employees, AFL-CIO, Council 28, AFSCME v. State*, 658 P.2d 634 (Wash. 1983); *Combs v. Cheek*, 671 S.W.2d 177 (Ark. 1984); *Berry v. Bd. of Trustees, Maine St. Retirement Sys.*, 663 A.2d 14 (Maine 1995); *Wallaesa v. Police Pension Com’n of Borough of Tamaqua*, 517 A.2d 1022 (Pa. Comm. Ct. 1986); *Vogt v. City of New Orleans*, 208 So. 2d 420 (App. 1968); MONT. CODE ANN. § 19; TEX. GOV’T CODE ANN. § 811.001(7).
 29. See Appendix A. Note that six states have a pension exception in their state constitutions that may limit gift clause challenges to pension spiking.
 30. *Turken*, 223 Ariz. at 349, 224 P.3d at 165.
 31. *Id.* at 348, 224 P.3d at 164.
 32. *Id.* at 350, 224 P.3d at 166.
 33. See Appendix A. At least 11 states have gift clauses with both a public purpose and consideration prong.
 34. Craig Harris and Dustin Gardiner, *Retiring City Manager Cavazos Able to “Spike” His City Pension*, ARIZ. REPUBLIC, Sep. 4, 2013 available at <http://www.azcentral.com/news/articles/20130829retiring-phoenix-city-manager-cavazos-able-spike-his-city-pension.html>.
 35. Beth Duckett and Craig Harris, *Rising Arizona Public Safety Pensions Strain Budgets*, ARIZ. REPUBLIC, May 8, 2013 available at <http://www.azcentral.com/news/politics/articles/20130502arizona-public-safety-pensions-strain-budgets.html>.
 36. ARIZ. REV. STAT. § 38-842(12).
 37. H.B. 2049, 51st Leg., 2nd Reg. Sess. (Ariz. 2014).
 38. Dustin Gardiner, *Phoenix Ballot Initiative Would Overhaul Pension System*, ARIZ. REPUBLIC, Sep. 16, 2013 available at <http://www.azcentral.com/community/phoenix/articles/20130916phoenix-ballot-initiative-would-overhaul-pension-system.html#protected>.

Appendix A

State	Constitutional provision(s)	Relevant case(s)	Remarks
Alabama	Ala. Const. §§ 93, 94, 98. Ala. Const. Amend. Nos. 150, 192 (and similar).	---	Gift Clause, but pension exception
Alaska	Ak. Const. art. 9, § 6.	<i>Dearmond v. Alaska St. Devt. Corp.</i> , 376 P.2d 717 (Alaska 1962).	Gift Clause satisfied by public purpose only
Arizona	Ariz. Const. art. 9, § 7.	<i>Turken v. Gordon</i> , 223 Ariz. 342, 224 P.3d 158 (2010).	Gift Clause satisfied by public purpose and consideration in some form
Arkansas	Ark. Const. art. 12, § 5; art. 16, § 1.	<i>City of Fort Smith v. Bates</i> , 544 S.W.2d 525 (Ark. 1976). <i>Forrest City v. Bank of Forrest City</i> , 172 S.W. 1148 (Ark. 1915).	Gift Clause satisfied by public purpose and consideration in some form
California	Cal. Const. art. 16, §§ 6, 17.	<i>Alameda County v. Janssen</i> , 16 Cal. 2d 276 (1940).	Gift Clause satisfied by consideration in some form
Colorado	Colo. Const. art. 11, §§ 1, 2.	<i>McNichols v. City & County of Denver</i> , 280 P.2d 1096 (Colo. 1955).	Gift Clause satisfied by public purpose only
Connecticut	Conn. Const. art. 1, § 1.	<i>State ex rel. Levine v. Lee</i> , 145 A.2d 378, 381 (Conn. Super. Ct. 1958).	Gift Clause satisfied by public purpose only
Delaware	Del. Const. art 8, §§ 4, 8.	<i>Opinion of the Justices</i> , 177 A.2d 205 (Del. 1962). <i>Fraternal Order of Firemen of Wilmington, Del., Inc. v. Shaw</i> , 196 A.2d 734 (Del. 1963).	Gift Clause satisfied by public purpose only
Florida	Fla. Const. art. 7, § 10.	<i>State ex rel. Destin v. Flowers</i> , 403 So.2d 488 (Fla. Dist. Ct. App. 1981). Fla. Op. Atty. Gen. No. 079-56, 1979 WL 31405 (May 30, 1979).	Gift Clause satisfied by public purpose and consideration in some form

State	Constitutional provision(s)	Relevant case(s)	Remarks
Georgia	Ga. Const. art. 3, § 6, ¶ 6.	<i>Haggard v. Bd. of Regents of Univ. Sys. of Ga.</i> , 360 S.E.2d 566 (Ga. 1987).	Gift Clause satisfied by public purpose and consideration in some form
Hawaii	Haw. Const. art. 7, § 4.	<i>State ex rel. Amemiya v. Anderson</i> , 545 P.2d 1175 (Haw. 1976).	Gift Clause satisfied by public purpose only
Idaho	Idaho Const. art. 8, §§ 2, 4; art. 12, § 4.	<i>Jensen v. Boise-Kuna Irr. Dist.</i> , 269 P.2d 755 (Idaho 1954).	Gift Clause satisfied by public purpose and consideration in some form
Illinois	Ill. Const. art. 8, § 1.	<i>Village of Oak Lawn v. Faber</i> , 880 N.E.2d 659 (Ill. App. Ct. 2007).	Gift Clause satisfied by public purpose and consideration in some form
Indiana	Ind. Const. art. 10, § 6; art. 11, § 12.	No case directly on point was found.	Gift Clause, but pension exception
Iowa	Iowa Const. art. 7, § 1.	<i>John R. Grubb, Inc. v. Iowa Housing Finance Authority</i> , 255 N.W.2d 89 (Iowa 1977).	Gift Clause satisfied by public purpose only
Kansas	None	N.A.	No Gift Clause
Kentucky	Ky. Const. §§ 177, 179.	<i>Hayes v. St. Property & Bldgs. Com'n</i> , 731 S.W.2d 797 (Ky. 1987).	Gift Clause satisfied by public purpose only
Louisiana	La. Const. art. 7, § 14.	<i>La. Mun. Ass'n v. State</i> , 893 So.2d 809 (La. 2005).	Gift Clause, but pension exception
Maine	None	N.A.	No Gift Clause
Maryland	Md. Const. art. 3, §§ 34, 54, 59.	<i>City of Frostburg v. Jenkins</i> , 136 A.2d 852 (Md. 1957).	Gift Clause satisfied by public purpose only
Massachusetts	Mass. Const. art. 62, §§ 1-4.	<i>In re Opinion of the Justices</i> , 8 N.E.2d 753 (Mass. 1937).	Gift Clause satisfied by public purpose only
Michigan	Mich. Const. art. 7, § 26; art. 9, §§ 18, 19.	<i>Sinas v. City of Lansing</i> , 151 N.W.2d 858 (Mich. Ct. App. 1967).	Gift Clause, but pension exception
Minnesota	Minn. Const. art. 11, § 2.	<i>Minn. Energy & Econ. Dev't Auth. V. Printy</i> , 351 N.W.2d 319 (Minn. 1984).	Gift Clause satisfied by public purpose only
Mississippi	Miss. Const. art. 4, § 66; art. 7, § 183; art. 14, § 258.	Miss. Op. Atty. Gen. No. 2009-00008, 2009 WL 367645.	Gift Clause satisfied by public purpose and consideration in some form

State	Constitutional provision(s)	Relevant case(s)	Remarks
Missouri	Mo. Const. art. 3, § 39; art. 6, §§ 23, 25.	<i>Kansas City v. Brouse</i> , 468 S.W.2d 15 (Mo. 1971). <i>St. Louis Police Officers' Ass'n v. Bd. of Police Com'rs</i> , 846 S.W.2d 732 (Mo. Ct. App. 1992).	Gift Clause, but pension exception
Montana	None	N.A.	No Gift Clause
Nebraska	Ne. Const. art. 13, § 3.	<i>Haman v. Marsh</i> , 467 N.W.2d 836 (Neb. 1991). <i>Retired City Civilian Employees Club of City of Omaha v. City of Omaha Employees' Retirement System</i> , 260 N.W.2d 472 (Neb. 1977).	Gift Clause satisfied by public purpose and consideration in some form
Nevada	Nev. Const. art. 8, §§ 9, 10.	<i>State ex rel. Brennan v. Bowman</i> , 503 P.2d 454 (Nev. 1972). <i>City of Las Vegas v. Ackerman</i> , 457 P.2d 525 (Nev. 1969).	Gift Clause satisfied by public purpose only
New Hampshire	N.H. Const. pt. 1, art. 10; pt. 2, art. 5. N.H. Const. pt. 1, art. 36.	<i>In re Opinion of the Justices</i> , 190 A. 425 (N.H. 1937).	Gift Clause satisfied by public purpose only
New Jersey	N.J. Const. art. 8, § 2, ¶ 1. N.J. Const. art. 8, § 3, ¶¶ 2-3.	<i>Roe v. Kervick</i> , 199 A.2d 834 (N.J. 1964). <i>Maywood Educ. Ass'n v. Maywood Bd. of Educ.</i> , 330 A.2d 636 (N.J. Super. Ct. Ch. Div. 1974).	Gift Clause satisfied by public purpose and consideration in some form
New Mexico	N.M. Const. art. 9, § 14.	<i>State ex rel. Office of State Engineer v. Lewis</i> , 150 P.3d 375 (N.M. App. 2006). <i>State ex rel. Sena v. Trujillo</i> , 129 P.2d 329 (N.M. 1942).	Gift Clause satisfied by public purpose and consideration in some form
New York	N.Y. Const. art. 7, § 8; art. 8, § 1.	<i>Grand Realty Co. v. City of White Plains</i> , 125 A.D.2d 639 (N.Y. App. Div. 1986).	Gift Clause, but pension exception

State	Constitutional provision(s)	Relevant case(s)	Remarks
North Carolina	N.C. Const. art. 5, §§ 3-4.	<i>N.C. State Ports Authority v. First-Citizens Bank & Trust Co.</i> , 88 S.E.2d 109 (N.C. 1955).	Gift Clause satisfied by public purpose and consideration in some form
North Dakota	N.D. Const. art. 10, § 18.	<i>Haugland v. City of Bismarck</i> , 818 N.W.2d 660 (N.D. 2012).	Gift Clause satisfied by public purpose only
Ohio	Ohio Const. art. 8, §§ 4, 6.	<i>Grendell v. Ohio Env'tl. Protection Agency</i> , 764 N.E.2d 1067 (Ohio App. 2001).	Gift Clause satisfied by public purpose and consideration in some form
Oklahoma	Okla. Const. art. 10, §§ 15, 17.	<i>In re Okla. Dev't Fin. Auth.</i> , 89 P.3d 1075 (Okla. 2004). <i>Burkhardt v. City of Enid</i> , 771 P.2d 608 (Okla. 1989).	Gift Clause satisfied by public purpose and consideration in some form
Oregon	Or. Const. art. XI, §§ 7, 9. Or. Const. art. XI-O, §§ 1, 4.	<i>Miles v. City of Eugene</i> , 451 P.2d 59 (Or. 1969). <i>Carruthers v. Port of Astoria</i> , 438 P.2d 725 (Or. 1968).	Gift Clause satisfied by public purpose only
Pennsylvania	Pa. Const. art. 8, § 8; art. 9, § 9.	<i>Tosto v. Pa. Nursing Home Loan Agency</i> , 331 A.2d 198 (Pa. 1975). <i>Kulp v. City of Philadelphia</i> , 140 A. 129 (Pa. 1928).	Gift Clause satisfied by public purpose only
Rhode Island	R.I. Const. art. 6, §§ 11, 16.	<i>Kennedy v. State</i> , 654 A.2d 708 (R.I. 1995). <i>Opinion to the Governor</i> , 308 A.2d 809 (R.I. 1973).	Gift Clause satisfied by public purpose only
South Carolina	S.C. Const. art. 10, §§ 11, 16.	<i>S.C. Farm Bureau Mktg. Ass'n v. S.C. State Ports Auth.</i> , 293 S.E.2d 854 (S.C. 1982).	Gift Clause satisfied by public purpose only
South Dakota	S.D. Const. art. 13, § 1.	<i>State v. Handlin</i> , 162 N.W. 379 (S.D. 1917).	Gift Clause satisfied by public purpose only
Tennessee	Tenn. Const. art. 2, §§ 29, 31.	<i>Chattanooga-Hamilton County Hospital Authority v. City of Chattanooga</i> , 580 S.W.2d 322 (Tenn. 1979). <i>Bedford County Hospital v. Browning</i> , 225 S.W.2d 41 (Tenn. 1949).	Gift Clause satisfied by public purpose only

State	Constitutional provision(s)	Relevant case(s)	Remarks
Texas	Tex. Const. art. 3, §§ 50-52; art. 11, § 3.	<i>Pasadena Police officers Ass'n v. City of Pasadena</i> , 497 S.W.2d 388 (Tex. Civ. App. 1973). <i>City of Houston v. Houston Firefighters' Relief & Retirement Fund</i> , 196 S.W.2d 271 (Tex. App. 2006).	Gift Clause satisfied by public purpose and consideration in some form
Utah	Utah Const. art. 6, § 29.	<i>Utah Housing Finance Agency v. Smart</i> , 561 P.2d 1052 (Utah 1977).	Gift Clause satisfied by public purpose only
Vermont	Vt. Const. chap. I, art. 7.	<i>Gross v. Gates</i> , 194 A. 465 (Vt. 1937).	Gift Clause satisfied by public purpose only
Virginia	Va. Const. art. 10, § 10.	<i>Almond v. Day</i> , 61 S.E.2d 660 (Va. 1956).	Gift Clause satisfied by public purpose and consideration in some form
Washington	Wash. Const. art. 8, §§ 5, 7. Wash. Const. art. 12, § 9; art. 29, § 1.	<i>King County v. Taxpayers of King County</i> , 949 P.2d 1260 (Wash. 1997). <i>In re Ltd. Tax Gen. Obligation Bonds of City of Edmonds</i> , 256 P.3d 1242 (Wash. App. 2011). <i>City of Marysville v. State</i> , 676 P.2d 989 (Wash. 1984).	Gift Clause satisfied by public purpose and consideration in some form
West Virginia	W. Va. Const. art. 10, § 6.	<i>State ex rel. Bd. of Govs. of W. Va. Univ. v. Sims</i> , 55 S.E.2d 505 (W. Va. 1949).	Gift Clause satisfied by public purpose only
Wisconsin	Wis. Const. art. 8, §§ 3, 7; art. 4, § 26.	<i>State ex rel. Singer v. Boos</i> , 171 N.W.2d 307 (Wis. 1969).	Gift Clause satisfied by public purpose only
Wyoming	Wyo. Const. art. 16, § 6.	<i>Frank v. City of Cody</i> , 572 P.2d 1106 (Wyo. 1977).	Gift Clause satisfied by public purpose and consideration in some form

The Goldwater Institute

The Goldwater Institute was established in 1988 as an independent, non-partisan public policy research organization. Through policy studies and community outreach, the Goldwater Institute broadens public policy discussions to allow consideration of policies consistent with the founding principles Senator Barry Goldwater championed—limited government, economic freedom, and individual responsibility. Consistent with a belief in limited government, the Goldwater Institute is supported entirely by the generosity of its members.

Guaranteed Research

The Goldwater Institute is committed to accurate research. The Institute guarantees that all original factual data are true and correct to the best of our knowledge and that information attributed to other sources is accurately represented. If the accuracy of any material fact or reference to an independent source is questioned and brought to the Institute's attention with supporting evidence, the Institute will respond in writing. If an error exists, it will be noted on the Goldwater Institute website and in all subsequent distribution of the publication, which constitutes the complete and final remedy under this guarantee.

GOLDWATER
I N S T I T U T E

Where freedom wins.