



By order of the court, **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**
Judge Kenneth L. Govendo

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FOR PUBLICATION

**IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**NORTHERN MARIANA ISLANDS
RETIREMENT FUND,**)
)
Plaintiff,)
)
vs.)
)
THE HON. BENIGNO R. FITIAL, in his)
official capacity as the Governor of the)
Commonwealth of the Northern Mariana)
Islands, **HON. ELOY S. INOS,** in his official)
capacity as the Lieutenant Governor of the)
Northern Mariana Islands, **BERNADITA)
SABLAN,** in her official capacity as the Clerk)
of the Superior Court of the Commonwealth of)
the Northern Mariana Islands, and **JOHN)
DOES 1-10,**)
)
Defendants,)
)
**MARIANO TAITANO, ROMAN T.)
TUDELA, and PATRICIA GUERRERO,**)
)
Intervenors.)

CIVIL ACTION NO. 11-0230

**FINDINGS OF FACT &
CONCLUSIONS OF LAW and
ORDER DENYING MOTION FOR
PRELIMINARY INJUNCTION**

I. INTRODUCTION

This MATTER came before the Court on the Northern Mariana Islands Retirement Fund’s (“Fund”) Motion for a Temporary Restraining Order hearing on September 19, 2011 at 9:00 a.m. in Courtroom 205A and concluded on September 20, 2011. The Fund’s motion asks

1 the Court to declare Public Law 17-51 unconstitutional so as to prevent derivative lawsuits.
2 Attorney for the Fund, Carolyn Kern, Esq. was present. Attorney Michael A. Stanker, Esq. was
3 present and represented the Defendants, Honorable Benigno R. Fitial, Honorable Eloy S. Inos,
4 Bernadita Sablan, and John Does 1-10. The Intervenor, Mariano Taitano, Roman T. Tudela, and
5 Patricia Guerrero, were represented by Michael W. Dotts, Esq.

6 7 **II. FINDINGS OF FACT**

- 8 1. The Fund was created by properly enacted legislation approved by the Legislature and
9 signed by the Governor. 1 CMC § 8312. The Fund refers to the agency itself and the
10 property it manages. The term “Beneficiaries” describes the individuals who rely on the
11 Fund to provide them with retirement benefits. 1 CMC § 8313(e). The Board of Trustees
12 (“Board”) describes “the governing body responsible for the direction and operation of
13 the affairs and business of the Fund.” 1 CMC § 8313(f). Importantly, the Board controls
14 the Fund, but remains a distinct entity. The members of the Board are appointed by the
15 Governor and approved by the Senate. 1 CMC § 8314(a). The Board is empowered to
16 “retain or contract with individuals or organizations for their services as qualified
17 managers and specialists.” 1 CMC § 8315(f). These individuals and organizations are
18 referred to as “Agents”, and include money managers, consultants, and other financial
19 experts. 1 CMC § 8313(b).
- 20 2. Since its inception, the Fund has retained actuaries, money managers, and investment
21 consultants to aid in its mission to provide pension benefits for Beneficiaries. To
22 function, the Fund must contract with various Agents to ensure an actuarially sound,
23 diversified investment policy. During the period relevant to this hearing, Buck
24 Consultants served as actuary; Wilshire Associates, Inc. served as investment consultant;
25 and Stralem & Co. and Fisher Investments served as money managers. The existence of
26 other Agents was discussed, but they were not named.
- 27 3. In 2010, the CNMI Legislature began debating the merits of legislation that would
28 empower Beneficiaries of the Fund to sue individuals and entities that had harmed

1 the Fund in cases where the Board was unable or unwilling to pursue the causes of action
2 itself. The Fund was actively involved in discussing the merits of such a bill, and even
3 submitted a proposed version of the bill that it felt would better serve the interests of the
4 Commonwealth, the Beneficiaries, as well as the Fund and its Agents. The Fund also
5 informed the Legislature and Executive Branch that the passage of this derivative bill
6 would cause the Fund hardship, such as “the Fund’s inability to contract for services with
7 money managers, investment consultants, its actuary, legal counsel, or any other service
8 provider,” and might result in the Fund’s current Agents abandoning their contracts.
9 Plaintiff’s Memo in Support at 2.

10 4. Public Law 17-51 was nearly a year in the making. Senate Bill No. 17-43 was introduced
11 by Senator Pete Reyes on September 17, 2010 and was later introduced to the full body
12 of the Senate on September 30, 2010. With several floor amendments, the Senate
13 subsequently passed the bill on the same day on Final Reading as Senate Bill 17-43,
14 Senate Draft 1 (“SD1”). On October 14, 2010, the Bill was transmitted to the House. On
15 October 15, 2010, the House referred Senate Bill No. 17-43, SD1 to the Committee on
16 Ways and Means and the Committee on Judiciary and Governmental Operations
17 (“JGO”). On March 28, 2011, JGO reported to the full body of the House, House
18 Committee Report No. 17-70, recommending the passage of Senate Bill 17-43, SD 1,
19 House Substitute 1 (“HS1”). On April 16, 2010, JGO reported to the House, House
20 Committee Report 17-70, Substitute 1, which was adopted on the same day on First and
21 Final Reading, recommending the passage of Senate Bill No. 17-43, SD1, HS1. Senate
22 Bill No. 17-43, SD1, HS1 was transmitted to the Senate on April 27, 2011. However, the
23 Senate rejected the House substitute on May 13, 2011, and referred the bill to a
24 conference committee.

25 5. The Board sought to have introduced a compromise version of Senate Bill 17-43, SD1,
26 HS1. The substitute bill would have been acceptable to the Fund’s money managers and
27 service providers. However, the substitute bill was not accepted by the Legislature.
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- 1 6. The Conference Committee subsequently issued a Report and substitute Bill. The House
2 rejected the Conference Committee Report, and the Conference Committee reported out a
3 new version of Senate Bill 17-43, SD1, HS1. The new version, CCS2, was then passed by
4 the Senate on August 3, 2011, and by the House on August 9, 2011.
- 5 7. On August 16, 2011, Senate Clerk, Dolores S. Bermudes, transmitted Senate Bill No. 17-
6 43, SD1, HS1, CCS2, entitled “To Expand shareholder derivative actions to the NMI
7 Retirement Fund so that individual beneficiaries can maintain lawsuits when trustees
8 refuse to do so”, to Acting Governor Eloy S. Inos.
- 9 8. On September 5, 2011, Acting Governor Inos signed Senate Bill No. 17-43, SD1, HS1,
10 CCS2 into law and the legislation became formally known as Public Law 17-51 (“PL 17-
11 51”).
- 12 9. In response to the Senate Bill being signed into law, numerous Agents that do business
13 with the Fund through the Board either immediately terminated their contracts or gave
14 notice of their intent to terminate.
- 15 10. On September 6, 2011, Stralem & Co. provided thirty (30) days notice of its decision to
16 terminate its contract with the Fund.
- 17 11. On September 9, 2011, Wilshire provided thirty (30) days notice of its decision to
18 terminate its contract with the Fund.
- 19 12. On September 12, 2011, Buck Consultants, the Fund’s actuary, suspended its contract
20 with the Fund.
- 21 13. On September 13, 2011, BlackRock, Inc., a potential money manager, notified the Fund
22 that it would not execute its contract.
- 23 14. On September 14, 2011, Fisher Investments provided thirty (30) days notice of its
24 decision to terminate its relationship with the Fund.
- 25 15. Also on September 14, 2011, the Fund filed this motion seeking a Temporary Restraining
26 Order (“TRO”).
- 27 16. On September 18, 2011, Mariano Taitano, Roman Tudela, and Patricia Guerrero sought
28 to intervene in this action and filed a brief opposing the grant of a TRO. The Court

1 allowed the applicants for intervention to participate in the TRO hearing and granted the
2 motion to intervene on September 21, 2011.

3 17. On September 19, 2011, the Office of the Attorney General filed a brief on behalf of the
4 Governor and Lieutenant Governor also opposing the grant of a TRO.

5 18. At the TRO hearing on September 19, 2011, Richard Villagomez (“Villagomez”), the
6 Fund’s Administrator, testified that the Fund’s various Agents provided critical services
7 that the Fund was statutorily required to obtain. Villagomez testified that Wilshire and
8 Buck Consultants are the two most important Agents retained by the Fund.

9 19. The Fund asserts that PL 17-51 has caused irreparable harm to the Fund. The alleged
10 harm is primarily in the form of various service providers cancelling their contracts with
11 the Fund. However, the contracts between the Agents and the Fund allow either party to
12 terminate the contract.

13 20. Villagomez testified that Wilshire would continue to provide services to the Fund if
14 insurance were purchased by the Fund. On the other hand, Buck Consultants will not
15 reconsider its contract with the Fund even if the enforcement of PL 17-51 is enjoined.

16 21. The Fund claims that Buck Consultants is needed to determine how to reduce benefits to
17 extend the life of the Fund, which Wilshire determined to be three years.

18 22. Villagomez further testified that the Fund had not yet started the Request for Proposals
19 (“RFP”) process to hire new Agents to replace those who already terminated their
20 agreements.

21 23. Villagomez stated that the RFP process takes about six months to complete. However,
22 there are emergency procurement measures. The Fund must begin the process now to
23 replace the Agents that the Fund believes are critically needed.

24 24. The Court decided, with the consent of all of the parties, that the Plaintiff’s Motion for a
25 Temporary Restraining Order would be converted into a Motion for a Preliminary
26 Injunction. All of the parties desired converting the hearing for a temporary restraining
27 order into a hearing for a preliminary injunction so that the losing party could
28 immediately file an appeal with the Commonwealth Supreme Court.

1 **III. CONCLUSIONS OF LAW**

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3 **A. Motion to Intervene**

4 Intervenor’s Motion to Intervene is governed by Com. R. Civ. 24(a)(2), which allows
5 interested parties to intervene upon timely application. The court may look to interpretations of
6 the Federal Rules of Civil Procedure case law for guidance in interpreting our local counterpart
7 Rule because the Commonwealth Rules are patterned after the Federal Rules. *Ada v. K.*
8 *Sadhwani's, Inc.*, 3 N.M.I. 303, 311 n.3 (1992).
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10 Rule 24(a)(2) of the Commonwealth Rules of Civil Procedure states:

11 [u]pon timely application anyone shall be permitted to intervene in an
12 action. . . when the application claims an interest relating to the
13 property or transaction which is the subject of the action and the
14 applicant is so situated that the disposition of the action may as a
15 practical matter impair or impede the applicant’s ability to protect that
interest, unless the applicant’s interest is adequately represented by
existing parties.

16 The applicants for intervention have an interest in the preservation of PL 17-51. The applicants
17 are all retired and rely on their retirement benefits for their livelihood. Under PL 17-51, retirees
18 have standing to bring lawsuits to protect their own interest in their retirement.
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20 The Court finds that the application for intervention is timely and the disposition of this
21 action will impact the interest of the applicants. Therefore, the Court grants Intervenor’s motion
22 to intervene.

23 **B. Standing**

24 The Court finds that the Fund has standing to challenge PL 17-51. The Court acknowledges
25 Defendants’ arguments on the Fund’s lack of standing. As this Court is aware, both the
26 Commonwealth Superior and Supreme Courts have allowed CNMI agencies to sue the CNMI
27 Government over constitutional violations. *DPL v. CNMI*, 2010 MP 14 (challenge to the
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1 constitutionality of PL 16-31); *Northern Marianas Housing Corp. v. Marianas Pub. Land Trust*,
2 1998 MP 1 (challenge to the constitutionality of PL 10-29, as amended by PL 10-49); *NMIRF v.*
3 *Fitial, et al.*, Civ. No. 06-0367 (challenge to the constitutionality of PL 15-15, among other
4 things). Moreover, the NMI Constitution allows for “intrastate” lawsuits even when there is not a
5 case or controversy, but when two government officials have a question to be resolved. NMI
6 Const. Art. IV, § 11.

8 **C. Proper Defendants**

9 The Fund has not named the proper parties in this matter. “In a suit brought to have a
10 declaration of the unconstitutionality of a state statute or to enjoin the enforcement of the statute,
11 an officer of a state is an appropriate defendant if he has some connection with the enforcement
12 of the act.” *Shell Oil Co. v. Noel*, 608 F.2d 208, 211-12 (1st Cir. 1979). In this action, the
13 Governor, Lieutenant Governor, and the Clerk of Court are being sued for the enactment of PL
14 17-51, all of whom play no role in the enforcement of PL 17-51. There is no case or controversy
15 between the Governor, Lieutenant Governor, the Clerk of Court, and the Fund over PL 17-51.
16 Here, PL 17-51 grants retirees, not the Governor, Lieutenant Governor, or the Clerk of Court,
17 standing to bring lawsuits against parties who injure the Fund.
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20 The Fund argues that the Clerk of Court is a proper party in this action because they are
21 seeking to enjoin the filing of lawsuits. The Court finds that the Clerk of Court is not a proper
22 party and dismisses Bernadita Sablan, Clerk of Court, from the lawsuit. All the parties have
23 agreed that the proper defendant in this action is the Commonwealth of the Northern Mariana
24 Islands (CNMI). The Fund is hereby ordered to amend its complaint and name the CNMI as
25 defendant.
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1 **D. Preliminary Injunction**

2 In its motion for a preliminary injunction, the Fund presented as evidence the testimony of
3 the Fund’s administrator, Richard Villagomez, a person who this Court has found to be candid
4 and truthful in the past. The Fund also introduced the following exhibits.

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6 EXHIBIT #	NAME
7 1	Letter from Buck Consultants
8 2	Letter from Wilshire
9 3	Letter from Stralem & Company
10 4	Letter from Fisher Investments
11 5	Correspondence between Richard Villagomez and 12 BlackRock Inc.
13 6	Letter from Stralem & Company
14 7	Proposed Bill

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17 Based on this evidence and a lot of conjecture by Villagomez and the Fund’s legal counsel
18 that no more actuaries, investment managers, or money managers will ever work for the Fund,
19 the Fund asks the Court to declare PL 17-51 to be unconstitutional. ¹ The Court, *at this time*,
20 (emphasis added) cannot do this.

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22 There is a presumption that properly passed bills that originate in the Legislature and are
23 properly signed into law by the Chief Executive are constitutional. This presumption is a pillar of
24 our constitutional democracy and the Court is, and should be, hesitant about declaring PL 17-51
25 unconstitutional based on the testimony of one person and six documents pursuant to a motion
26 for a temporary restraining order and/or a motion for a preliminary injunction.

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28 ¹ Plaintiff’s exhibits 1-6 do not provide very much detail as to why PL 17-51 is so harmful. None of the writers of these documents were present at the hearing and there was no verbal testimony.

1 There is no doubt that in the minds of the entities documented in Plaintiff's exhibits 1-6
2 there is much wrong with PL 17-51. Like so many things in the CNMI, forewarnings go
3 unheeded and many act surprised when the consequences become known. This is the situation in
4 the instant case. PL 17-51 has frightened one actuary, one investment manager, and two money
5 managers to the point where they have terminated their contracts. The Administrator and the
6 Fund's attorneys seriously believe that the Fund will not be able to retain any other professionals
7 in the future because all will be discouraged by the prospect of a derivative suit being brought by
8 one or more of 20,000 potential plaintiffs. This may very well be true and, if proven, may
9 warrant a finding of unconstitutionality later on in the lawsuit, or better yet, a new law replacing
10 PL 17-51 that attempts to address the concerns of the Fund, Beneficiaries, and professionals
11 working for the Fund. However, at this time, the Court must consider the evidence before it, and
12 it is simply not enough for a preliminary injunction.
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15 **i. Standard for Injunctive Relief**

16 Due to the drastic nature of injunctive relief, plaintiffs must use clear and convincing
17 evidence to demonstrate their right to injunctive relief. *Bean Dredging Corp. v. United States*, 22
18 Cl. Ct. 519, 522 (1991). In issuing a preliminary injunction, the Court must examine the
19 following factors: "(1) whether the plaintiff has a strong likelihood of success on the merits; (2)
20 the level of the threat of irreparable harm to the plaintiff if the relief is not granted; (3) the
21 balance between the harm the plaintiff will face if the injunction is denied and the harm the
22 defendant will face if the injunction is granted; and (4) any effect the injunction may have on the
23 public interest." *Villanueva v. Tinian Shipping & Transp., Inc.*, 2005 MP 12 ¶ 20 (citing *Johnson*
24 *v. California State Bd. Of Accountancy*, 72 F.3d 1427, 1430 (9th Cir. 1995)). On the other hand,
25 the Court may also grant a preliminary injunction if the moving party shows either (1) a
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1 probability of success on the merits and the possibility of irreparable harm, or (2) the existence
2 of serious questions going to the merits and the balance of the hardships tips sharply in plaintiff's
3 favor. *Id.*

4 **ii. Likelihood of Success on the Merits and Irreparable Harm**

5 A necessary prerequisite to the entry of a preliminary injunction is a showing of irreparable
6 injuries. *Sablan v. Board of Elections*, Civ. No. 93-1274 (N.M.I. Sup. Ct., Jan. 3, 1994). To show
7 irreparable harm, the moving party must demonstrate that the injury is actual and imminent,
8 rather than a remote or speculative possibility, and such injury is not compensable with monetary
9 damages. *Pac. Am. Title Ins. & Escrow (CNMI), Inc. v. Anderson*, 1999 MP 15 ¶ 12-13.
10 “Speculative injury does not constitute irreparable injury.” *Id.* (quoting *Goldies Bookstore, Inc.*
11 *v. Superior Court of the State of California*, 739 F.2d 466, 472 (9th Cir. 1984)).
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14 The Fund has failed to support this critical element except with showing that certain Agents
15 unilaterally terminated their contracts with the Fund. The Court finds that the Fund possesses
16 contracts with its various agents, and that four of those Agents voluntarily elected to terminate
17 their relationship with the Fund in response to PL 17-51. The implication that these cancellations
18 of contracts would lead to other money managers and investment managers not wanting to do
19 business with the Fund is speculative injury. From the notices of intent to terminate, the Fund
20 had thirty days to replace the Agents who have cancelled their contracts. Villagomez testified
21 that about 70 money managers responded to the Fund's last RFP. However, no effort has been
22 made to determine if any of them would be willing to replace those who have terminated their
23 relationship with the Fund.
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26 Article I, Section 1 of the Commonwealth provides that “[n]o law shall be made that is... a
27 law impairing the obligation of contracts...” N.M.I. Const. Art. I, §1. This language largely
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1 mirrors Article I, Section 10, Clause 10 of the United States Constitution, which states “no state
2 shall enter into any... law impairing the obligation of contracts.” U.S. Const., Art. I, § 10, Cl. 1.

3 The CNMI Supreme Court adopted a three-part test to determine whether a particular
4 legislation violated the Contracts Clause. *Tano Group, Inc. v. Department of Public Works*, 2009
5 MP 18 ¶ 60. First, there must be a contract; second, the legislation must impair that contract; and
6 third, the impairment must be substantial. *Id.* The Court finds that contracts exist between the
7 Fund and its Agents. In determining what constitutes impairment for purposes of the Contracts
8 Clause, the court should look to “whether the State has used its law-making powers not merely to
9 breach its contractual obligations, but to create a defense to the breach that prevents the recovery
10 of damages.” *University of Hawai’i Professional Assembly v. Cayetano*, 183 F.3d 1096, 1102
11 (9th Cir. 1999). Thus, a statute that breaches a contract does not constitute an impairment so long
12 as the non-breaching party still has remedies under law to cure such a breach. In this instance,
13 the Board still possesses all the legal rights it possessed before the passage of PL 17-51. While
14 its Agents have terminated their contracts, all contracts entered into between the Fund and its
15 Agents are terminable at the will of either party. 1 CMC § 8373(c)(5). The Fund can sue the
16 money managers, consultants, and actuaries who have terminated their relationship with the
17 Fund if it feels that the terminations are wrongful.

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21 PL 17-51 is being challenged by the Fund on the basis that it alters the statute of limitations
22 and allows Beneficiaries to file suit for damage done to the Fund. The Fund argues that these
23 changes are a substantial impairment of contracts in violation of the Contracts Clause of the
24 Commonwealth Constitution because PL 17-51 prompted the Agents to exercise their contractual
25 rights to terminate their contracts with the Fund. The Agents chose to invoke their contractual
26 rights to terminate. The fact that PL 17-51 resulted in some of the Fund’s Agents deciding to
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1 terminate their respective contracts does not constitute an impairment of the Fund's contracts,
2 and no other provision of the law results in the Fund being unable to fully enforce its contracts
3 against its Agents. The Board still possesses all of the rights and duties it always has. Only now,
4 those rights have been supplemented.

5 The Fund suffers no direct harm from PL 17-51. PL 17-51 actually increases the rights and
6 remedies available to the Fund and Beneficiaries, though it may have temporarily
7 inconvenienced the Board because now the Board must hire new Agents to manage its assets.
8 While it has resulted in the Fund's assets being placed in bank accounts instead of securities,
9 such a situation is temporary.² The enactment of PL 17-51 resulted in Agents terminating their
10 contracts with the Board which caused the Fund's assets to be temporarily placed in low-yield
11 accounts until new Agents are retained. While the Board could minimize its harm by attempting
12 to contract with new Agents, the Board has taken no action to start the RFP process. The Board
13 has presented no evidence of any attempt to hire new Agents.

14 The Fund's exhibits and testimony demonstrate that a preliminary injunction will not do
15 anything to restart its relationships with its Agents. BlackRock, a potential money manager,
16 stated that an injunction will not cause it to restart negotiations, and that it would only consider
17 doing business with the Fund if the law was struck down on appeal. See Plaintiff's Exhibit 5.
18 Thus, not only does PL 17-51 not cause the Fund irreparable harm, but a preliminary injunction
19 will do nothing to remedy the current situation.

20 **iii. Balance of the Hardships**

21 The third factor the Court examines in issuing a preliminary injunction is the balance
22 between the harm the plaintiff will face if the injunction is denied and the harm the defendant
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28 ² During the pendency of this action, the Dow Jones Industrial Average has dropped to its yearly low and lost more than 700 points.

1 will face if the injunction is granted. The Fund suffers no harm from the enactment of PL 17-51.
2 Its Agents have harmed it by terminating their contracts with the Fund, but that harm is distinct
3 from PL 17-51. A preliminary injunction will do little to improve the contracting climate of the
4 Fund. The law must either be fully struck down or upheld in order for the Board to be able to
5 inform its Agents of the level of risk associated with doing business with the Fund.
6

7 If a preliminary injunction is granted, Beneficiaries will be harmed by not being able to
8 bring suits against actors who harmed the Fund during the duration of an injunction. Moreover, a
9 preliminary injunction will enjoin a constitutional law from operating.

10 **iv. Public Interest**

11 The fourth factor the Court considers is the effect of the injunction on public interest. There
12 are two negative public policy impacts from enjoining the law. First, it will deprive the
13 Beneficiaries the ability to sue those on behalf of the Fund who have harmed the Fund. The
14 Board has always possessed this power, but the Legislature deemed it appropriate to extend this
15 right to the Beneficiaries. Thus, to enjoin the law would enjoin the right of injured parties to seek
16 a redress of their injuries in a court of law. Second, courts are to always presume the
17 constitutionality of duly enacted statutes unless a clear and constitutional violation is shown.
18 *Northern Marianas Hous. Corp. v. Marianas Public Land Trust*, 1998 MP 1 ¶ 9.
19

20 The Fund argues that an injunction will maintain the status quo and extend the life of the
21 Fund by being able to continue with an investment program that will best serve the public
22 interest. However, as stated above, a preliminary injunction will not do anything to restart the
23 Funds' relationships with its Agents. Until the law is struck down or upheld, the Fund can hire
24 new Agents, and those Agents can purchase insurance to mitigate the additional risks caused by
25 PL 17-51.
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1 **v. Article III, Section 20(a)**

2 The Fund also fails to demonstrate a likelihood of success on the merits with respect to its
3 argument that PL 17-51 violates Article III, Section 20(a) of the Commonwealth Constitution.
4 Article III, Section 20(a) provides that membership in an employee retirement system is a
5 contractual relationship and that accrued benefits shall be neither diminished nor impaired.
6 N.M.I. Const. Art. III, § 20(a).
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8 PL 17-51 does not directly affect the Fund's assets. Without a direct effect, the law
9 cannot violate the constitution. It merely has the incidental effects of changing the contracting
10 climate that the Board must operate in. The temporary incidental effects of PL 17-51 do not
11 constitute an impairment or a diminishment of the Beneficiaries interests. The Fund is fully
12 capable of suing on its contracts for any conduct by its Agents that violates those contracts. PL
13 17-51 expands the Fund's rights as the Beneficiaries can now sue on behalf of the Fund when the
14 Board refuses to act. Thus, there is no impairment.
15

16 **IV. CONCLUSION**

17 Duly enacted statutes are presumed constitutional. PL 17-51 increased standing and has no
18 direct impairment on the Fund. The termination of contracts by four of the Fund's Agents is an
19 incidental effect of PL 17-51. The granting of a preliminary injunction will not cause the Fund's
20 Agents to resume their contracts. The Fund can hire new Agents, and those Agents can purchase
21 insurance to mitigate the additional risks caused by PL 17-51.
22

23 For the foregoing reasons, the Plaintiff's motion for a preliminary injunction is DENIED.

24 **IT SO ORDERED** this 7 day of October, 2011.

25
26
27 KENNETH

27 _____
/s/
L. GOVENDO,
28 Associate Judge