IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

BOARD OF TRUSTEES OF THE NORTHERN MARIANA ISLANDS RETIREMENT FUND,
Petitioner-Appellant,

v.

MARTIN B. ADA,
Respondent-Appellee.

SUPREME COURT NO. 2010-SCC-0033-CIV
SUPERIOR COURT NO. 09-0308

OPINION

Cite as: 2012 MP 10

Decided August 30, 2012

Carolyn M. Kern, Legal Counsel, Northern Mariana Islands Retirement Fund, Saipan, MP, for Petitioner-Appellant.
Michael W. Dotts, O'Connor Berman Dotts & Banes, Saipan, MP, for Respondent-Appellee.

BEFORE: F. PHILIP CARBULLIDO, Justice Pro Tem; ROBERT J. TORRES, Justice Pro Tem; ALBERTO C. LAMORENA III, Justice Pro Tem.

CARBULLIDO, J.:

¶ 1 This case arises from two related statutory provisions which provided a retirement bonus of an additional three percent to NMI legislators and to certain other members of the Northern Mariana Islands Retirement Fund ("Fund"). Petitioner-Appellant the Board of Trustees of the Northern Mariana Islands Retirement Fund ("Board") appeals the trial court's conclusion that this three percent bonus is constitutional. The Board argues that the bonus violates article II, section 15 of the NMI Constitution; article II, section 10 of the NMI Constitution; and the Equal Protection Clauses of the United States and NMI Constitutions; and that Respondent-Appellee Martin B. Ada ("Ada") is therefore not entitled to retirement benefits attributable to the bonus. For the reasons stated herein, we reverse the trial court's conclusion and hold that the three percent bonus contained in Public Law 6-17 violates article II, section 15 of the NMI Constitution. We further hold that the bonus is not void *ab initio* and is void prospectively only. We remand this case to the trial court with instructions to calculate Ada's retirement benefits in accordance with this opinion.

I

¶ 2 Ada began employment with the Commonwealth government in 1978, and he held various government positions until his retirement in 1997. In 2000, Ada was re-employed as a member of the Commonwealth House of Representatives, a position he held until he retired for the second time in January 2008. In January 2009, Ada was again re-employed with the Commonwealth government, from which he retired for the third and final time in September 2009.

¶ 3 In April 1989, the NMI Legislature ("Legislature") enacted Public Law 6-17. The law, through two related provisions, provided an "additional three percent times average annual salary times years of service" ("3% bonus") to members of the Northern Mariana Islands Retirement Fund ("Fund") who served as a "Governor, Commonwealth Trial Court Judge, Lieutenant Governor, Mayor, member of the legislature [or] Resident Representative to the United States . . . ."[1] The 3% bonus was repealed effective

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[1] Section 8331(d) of P.L. 6-17, codified as 1 CMC § 8341(d), provided an "additional three percent times average annual salary times years of service" to "[g]overnor[s], [c]ommonwealth [t]rial [c]ourt [j]udge[s], [l]ieutenant [g]overnor[s], [m]ayor[s], member[s] of the legislature[] [and] [r]esident [r]epresentative[s] to the United States" who were "Class I" members of the Fund. Section 8334(f) of P.L. 6-17, codified at 1 CMC § 8341(f), made the same provision for "Class II" members of the Fund. "Class I" members are defined as persons who became members of the Fund after the enactment of P.L. 6-17. *Cody v. N. Mariana Islands Ret. Fund*, 2011 MP 16 ¶ 5. "Class II" members are defined as persons who became members of the Fund prior to the enactment of P.L. 6-17. *Id.* The 3% bonus was retroactive to 1978.

December 5, 2003 by section 3 of Public Law 13-60. Because the 3% bonus was enacted in 1989 and not repealed until December 2003, it was in effect for the first three years that Ada served as a legislator.

¶ 4 In February 2008, after he retired for the second time, Ada received a letter from the Fund enumerating the retirement benefits to which he was entitled. The benefits stated in the letter did not include any amount attributable to the 3% bonus. The benefits also did not include any amount attributable to a "double-dipping" provision contained in article 3, section 20 of the NMI Constitution ("double-dipping benefits").[2]

¶ 5 In April 2009 Ada filed suit against the Board in federal court, alleging that he should be awarded both benefits attributable to the 3% bonus and double-dipping benefits. This suit was later dismissed by agreement of the parties. On August 5, 2009, following the dismissal of the federal court action,[3] the Board filed a petition for declaratory relief ("Petition") in the Superior Court. Respondent-Appellee's Appendix at 1-10. Although the Petition purported to be filed jointly, it was not signed by Ada. The opening brief in support of the Petition ("Opening Brief") asked the trial court to adjudicate the constitutionality of the 3% bonus and alleged that the 3% bonus was unconstitutional under article II, section 15 of the NMI Constitution. Petitioner-Appellant's Appendix to Reply Br. at 1-17. On December 18, 2009, Ada filed a document titled "Respondent's Cross Motion for Declaratory Judgment and/or Summary Judgment" ("Summary Judgment Motion"). Petitioner-Appellant's Appendix to Reply Br. at 27. In the brief filed in support of the Summary Judgment Motion, Ada requested that the trial court award him benefits attributable to the 3% bonus. He also requested double-dipping benefits for the years 2000 through 2007.

¶ 6 The trial court heard oral argument on both the Petition and the Summary Judgment Motion, and then authorized the Board to file supplemental briefing. The Board accordingly filed a supplemental brief maintaining that the 3% bonus was unconstitutional under article II, section 15 of the NMI Constitution.

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[2] Article 3, section 20(b) of the NMI Constitution states:

> An employee who has acquired not less than twenty years of creditable service under the Commonwealth retirement system shall be credited an additional five years and shall be eligible to retire. An employee who elects to retire under this provision may not be reemployed by the Commonwealth Government or any of its instrumentalities or agencies, for more than 60 days in any fiscal year without losing his or her retirement benefits for the remainder of that fiscal year.

[3] The parties allegedly agreed to proceed by way of an administrative hearing following the dismissal of the federal court action. Oral Argument at 10:21-35, 32:57-33:02, *Bd. of Trustees of the N. Mariana Islands Ret. Fund v. Ada*, Civ. No. 09-0308 (NMI Sup. Ct. Jan. 17, 2012). However, for reasons that are unclear from the record, no administrative hearing was ever held and the administrative hearing process was never concluded. *Id.* Eventually the parties allegedly agreed to proceed with a declaratory judgment action in the Superior Court in lieu of an administrative hearing. *Id.; see also* Respondent-Appellee's Br. at 3 ("An administrative hearing officer was appointed but the hearing was delayed. The parties then agreed to dispense with the administrative hearing and to proceed directly to the Superior Court by way of an action for declaratory judgment.").

The supplemental brief also argued that the 3% bonus provision was unconstitutional under both article II, section 10 of the NMI Constitution and the Equal Protection Clauses of the United States and NMI Constitutions. In addition, the supplemental brief asserted that Ada's claim to double-dipping benefits was barred by the six-year statute of limitations in 7 CMC § 2505.

¶ 7 On August 26, 2010, the trial court entered an order adjudicating both the Petition and the Summary Judgment Motion. Respondent-Appellee's Appendix at 57-68. It concluded that the 3% bonus did not violate either article II, section 15 of the NMI Constitution or article II, section 10 of the NMI Constitution and that Ada was consequently entitled to the 3% bonus for the years 2000, 2001, 2002 and 2003. The trial court also concluded that Ada was entitled to double-dipping benefits for the years 2000 through 2007.

II

¶ 8 "The Supreme Court has appellate jurisdiction over judgments and orders of the Superior Court of the Commonwealth." 1 CMC § 3102(a).

III

¶ 9 We review the constitutionality of the 3% bonus de novo. *N. Marianas Coll. v. Civil Serv. Comm'n*, 2007 MP 8 ¶ 2 (citations omitted) (stating that questions of constitutional interpretation are reviewed de novo). In the event that the 3% bonus is held unconstitutional, we review de novo whether the 3% bonus is void *ab initio* or whether it is void prospectively only. *See id.* We also review de novo whether Ada's claim for permissible double-dipping is barred by the applicable statute of limitations. *Century Ins. Co., Ltd., v. TAC Int'l Constructors, Inc.*, 2006 MP 10 ¶ 8 (stating that the question of when a claim accrues under an applicable statute of limitations is an issue of law that we review de novo).

IV

A. Subject Matter Jurisdiction

¶ 10 Parties aggrieved by agency action are required to exhaust their administrative remedies and to appeal from a final agency action. *Cody v. N. Mariana Islands Ret. Fund*, 2011 MP 16 ¶ 9. Here, Ada appealed the denial of his retirement benefits to the Board when his federal court action was dismissed. However, although an administrative hearing officer was appointed to hear the appeal, no hearing was ever held and Ada never received a formal decision from the Board. Before addressing the merits of the parties' claims, we must therefore consider both whether Ada has exhausted his administrative remedies and whether he has appealed from a final agency action. Because neither of the parties have raised these jurisdictional issues on appeal, the Court is obligated to raise the issues *sua sponte*. *Cody*, 2011 MP 16 ¶ 10.

¶ 11 In cases where a party is aggrieved by an action of the Fund, this Court has held that an intra-agency appeal to the Board and a subsequent decision is an administrative remedy that the aggrieved

party generally must exhaust before proceeding to the trial court. *Id.* ¶ 12. However, it is also well-established that there is no need to require resort to administrative remedies when those remedies would be futile. *Shalala v. Ill. Council on Long Term Care*, 529 U.S. 1, 13 (2000) ("[d]octrines of 'ripeness' and 'exhaustion' contain exceptions . . . when exhaustion would prove 'futile' . . . .") (citations omitted); *see also Rivera v. Guerrero*, 4 NMI 79, 82 (1993) (considering but subsequently rejecting petitioner's argument that he need not exhaust administrative remedies because exhaustion would have been futile).[4] Neither parties nor agencies benefit when further exhaustion would result in "a commitment of administrative resources unsupported by any administrative or judicial interest." *Weinberger v. Salfi*, 422 U.S. 749, 766 (1975).

¶ 12 This case is unique in that Ada, the party aggrieved by an agency action, did not himself file a complaint with the trial court. Instead this case was brought by the agency itself, seeking relief in the form of guidance as to its fiduciary duties. Ada brought his claims against the Board in response to the Board's own petition for declaratory relief. In this instance, where the administrative agency has expressed a firm position at the administrative level and it is the agency itself that is seeking review, mandating any further decision to satisfy the exhaustion requirement would be futile. *See Mathews v. Diaz*, 426 U.S. 67, 75-77 (1976) (holding that exhaustion requirement was not a bar to claims, despite lack of any "formal administrative action," when agency Secretary stipulated that no facts were in dispute and moved for summary judgment; stating that stipulation was "tantamount to a decision denying the application and as a waiver of the exhaustion requirements."); *Weinberger*, 422 U.S. at 765-67 (holding that further exhaustion of administrative remedies was futile when only issue was constitutionality of a statutory requirement, and claimant had presented the issue at "sufficiently high level of review" to satisfy agency's needs). We therefore find that requiring the Board to meet and issue a decision would have been futile.

¶ 13 Turning to the final agency action requirement, a final agency action need not take the form of a formal agency decision. Instead, it may be any action that "mark[s] the consummation of the agency's decision making process" and either determines "rights or obligations" or occasions "legal consequences." *Cody*, 2011 MP 16 ¶ 18 (citations omitted) (internal quotations omitted); *see also Alaska Dep't of Envtl. Conservation v. Envtl. Prot. Agency*, 540 U.S. 461, 483 (2004) (holding that agency orders constituted reviewable final agency action when agency had asserted its final position on facts underlying orders and petitioner could not escape legal consequences if orders survived judicial review). Here, the

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[4] *See also Bowen v. New York*, 476 U.S. 467, 484-85 (1986) (holding that exhaustion would be futile when state agencies adhered to a policy due to pressure from federal agency); *Glover v. St. Louis-San Francisco Ry. Co.*, 393 U.S. 324, 327 (1969) (holding that further exhaustion was not required when plaintiffs were completely frustrated in efforts to present grievance to agency).

Board did not issue any formal decision adjudicating Ada's intra-agency appeal. However, its Petition and accompanying briefing did take a clear and final position as to the merits of Ada's claims for retirement benefits. The Petition argued that the 3% bonus was unconstitutional and that Ada was therefore not entitled to the bonus. *See* Respondent-Appellee's Brief at 6-8. Moreover, if unchallenged, the Petition would have determined Ada's right to the 3% bonus and may have occasioned legal consequences for Ada by either permitting or barring him from claiming the bonus. We may therefore consider the Petition to be a final agency action.

¶ 14 We note that our jurisdictional analysis is narrowly tailored to the unique facts of this case, where an agency has petitioned the court for declaratory relief as to an issue of constitutional law and a petitioner aggrieved by agency action has brought claims in response to that petition. It is only because the Petition finally expressed the Board's position and rendered further administrative action futile that we hold the exhaustion and final agency action requirements satisfied.

B. Constitutionality of the 3% Bonus

¶ 15 The Board argues that the 3% bonus is unconstitutional under article II, section 15 of the NMI Constitution ("section 15"). Section 15 provides that a member of the Legislature "may not debate on or vote on" a bill in which the member has a financial or personal interest. NMI Const. art. II, § 15. A financial interest is broadly defined as "a possibility that the legislator or any member of his family may have a monetary gain or loss as a result, direct or indirect, of the enactment or enforcement of a bill." *Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands* 58 (1976). However, there is no Commonwealth case law or other Commonwealth authority further interpreting the definition of a financial interest under section 15. We must therefore examine the case law of other jurisdictions to help determine if members of the Legislature had an impermissible financial interest in the 3% bonus. *See* 7 CMC § 3401.[5]

¶ 16 A number of state constitutions include provisions similar to section 15. *See, e.g., Opinion of the Justices No. 317*, 474 So. 2d 700, 702 (Ala. 1985) (quoting provision of the Alabama Constitution which provides that "[a] member of the legislature who has a personal or private interest in any measure . . . shall not vote thereon"; stating that "[a] number of states have similar or virtually identical

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[5] Title 7 CMC § 3401, Applicability of Common Law states:

> In all proceedings, the rules of the common law, as expressed in the restatements of the law approved by the American Law Institute and, to the extent not so expressed as generally understood and applied in the United States, shall be the rules of decision in the courts of the Commonwealth, in the absence of written law or local customary law to the contrary; provided, that no person shall be subject to criminal prosecution except under the written law of the Commonwealth.

provisions in their constitutions"). Among the jurisdictions with constitutional provisions similar to section 15, it is well-established that legislators are permitted to vote on matters "which affect the legislator equally with other members of a large class." *Id*. Thus, in *Opinion of the Justices No. 317*, the Alabama Supreme Court held that legislators who were also teachers did not act unconstitutionally by voting on a statutory provision that affected the salary of teachers, because the legislators and the members of the public who worked as teachers were affected equally. *Id.* at 703-04. The court also recognized that members of the legislature were permitted to enact legislation related to insurance, taxation, utility rates, and other matters that affected a legislator in the same manner in which they affected the entire community. *Id.* at 703 (citation omitted). In *Stovall v. Gartrell*, 332 S.W.2d 256, 260-61 (Ky. 1960), the Kentucky Court of Appeals applied similar reasoning to permit members of the legislature who were also veterans to vote upon legislation providing a bonus for veterans.

¶ 17 The jurisdictions with constitutional provisions similar to section 15 differ somewhat in their determination of the type of legislation that a legislator may not vote upon. However, multiple jurisdictions have stated that legislation is unconstitutional if the legislator's personal interest in the legislation conflicts with the interests of those whom the legislator was elected to represent. *Opinion of the Justices No. 368*, 716 So. 2d 1149, 1151 (Ala. 1998) (interpreting a constitutional provision as prohibiting legislators from voting on any bill "in which the legislator's personal interest conflicts with the interests of those he was elected to represent") (citation omitted); *Stovall*, 332 S.W.2d at 260 (stating that statutory provision must be construed "as restricting the right to vote only to those members who have a peculiar special interest in legislation which will affect them in a manner differently from the public or a proper classification of members of the public."). Legislation may also be suspect if it affects a legislator individually or as a member of a small group. *Opinion of the Justices No. 317*, 474 So. 2d at 703-04 ("The conclusion is inescapable that the phrase 'personal or private interest' in section 82 means an interest affecting the legislator individually or as a member of a small group.").

¶ 18 In light of the foregoing authority, the central issue here is whether the 3% bonus affects the members of the Legislature equally with other members of a large class, or conversely, if it implicates a conflict of interest between the legislators and the public or affects the legislators as members of a small group. We find that the 3% bonus falls more properly into the latter category. The bonus does not incidentally affect legislators who happen to hold other professions, as did the provision related to salary in *Opinion of the Justices No. 317* and the statute related to veteran bonuses in *Stovall*. Nor does the 3% bonus affect the community as a whole or a large segment of the community, as might legislation affecting taxes, insurance benefits, or utility rates. Instead, the 3% bonus provision targets a select group of persons: governors, Commonwealth judges, lieutenant governors, mayors, members of the legislature, and resident representatives to the United States. Moreover, it is reasonable to conclude that when the

Legislature enacted the 3% bonus, the legislators' personal interest in receiving higher retirement benefits for themselves and for a select group of other government officials conflicted with the interest of the general public in maintaining a solvent Fund. We therefore hold that the 3% bonus is unconstitutional under section 15.

¶ 19 Because we hold the 3% bonus to be unconstitutional under section 15, we do not reach Ada's arguments that the 3% bonus is also unconstitutional under article II, section 10 of the NMI Constitution and under the Equal Protection Clauses of the U.S. and NMI Constitutions. Neither do we reach the Fund's argument that the Equal Protection issue is raised for the first time on appeal. Having held the 3% bonus to be unconstitutional, we now consider whether the 3% bonus is void *ab initio*, as if it had never been enacted, or whether it is void prospectively only.

C. Void Ab Initio

¶ 20 Ada argues that if the 3% bonus is unconstitutional, then the appropriate remedy is to strike the 3% bonus provision but not to "divest anyone of their long standing rights and expectations." Respondent-Appellee's Br. at 7. The Board counters that if the 3% bonus is unconstitutional then it is void *ab initio* and is ineffective for any purpose, and the Fund may therefore recoup the 3% bonus from all Fund members who wrongfully received it.

¶ 21 The phrase "void *ab initio*" means "'[n]ull from the beginning, as from the first moment when a contract is entered into.'" *Aldan v. Pangelinan*, 2011 MP 10 ¶ 5 (quoting BLACK'S LAW DICTIONARY 1270 (7th ed. 1999)). In *Norton v. Shelby Cnty.*, 118 U.S. 425, 442 (1886), the United States Supreme Court ("Supreme Court") stated that "[a]n unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed." *Norton* became the basis for the frequently cited rule that an unconstitutional statute is void *ab initio* and is ineffective for any purpose. *See Fairmont v. Pitrolo Pontiac-Cadillac Co.*, 308 S.E.2d 527, 534 (W. Va. 1983).

¶ 22 The Supreme Court first departed from the strict void *ab initio* rule articulated in *Norton* in *Chicot County Drainage Dist. v. Baxter State Bank*, 308 U.S. 371 (1940). *Chicot County* involved a statutory provision that provided for municipal debt re-adjustment. 308 U.S. at 372. The county invoked the provision to obtain a court decree that confirmed a proposed re-adjustment of municipal bonds. *Id.* at 373. After the decree issued, the lower court held the statutory provision providing for debt re-adjustment to be unconstitutional. *Id.* at 373-74. Certain municipal bond-holders then brought suit against the county and challenged the decree on the grounds that it had been issued pursuant to an unconstitutional statute. *Id.* at 373-74.

¶ 23 On appeal, the Supreme Court stated in relevant part:

> [B]road statements as to the effect of a determination of unconstitutionality must be taken with qualifications. The actual existence of a statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects, -- with respect to particular relations, individual and corporate, and particular conduct, private and official. *Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination.* These questions are among the most difficult of those which have engaged the attention of courts, state and federal, and it is manifest from numerous decisions that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified.

Id. at 374. (emphasis added). Applying this rationale to the case at bar, the Supreme Court declined to invalidate the decree, despite the fact that it had been issued pursuant to an unconstitutional statute. *Id.* at 374-75.

¶ 24 Following *Chicot County*, the Supreme Court repeatedly rejected strict interpretations of the void *ab initio* rule, instead relying upon principles of reasonableness and fairness to determine the effect of unconstitutional statutes. In *Linkletter v. Walker*, 381 U.S. 618 (1965), *abrogated in part as stated in Davis v. United States*, ___ U.S. ___, 131 S. Ct. 2419, 2430 (2011)), the Supreme Court considered the issue of whether the exclusionary rule stated in *Mapp v. Ohio*, 367 U.S. 643 (1961) applied retroactively. It stated:

> Once the premise is accepted that we are neither required to apply, nor prohibited from applying, a decision retrospectively, *we must then weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation*.

Linkletter, 381 U.S. at 629 (emphasis added). *Linkletter* reasoned that, because the existence of pre-*Mapp* case law was an operative fact that could not be ignored and because a retroactive application of *Mapp* would re-open final decisions and "tax the administration of justice to the utmost," it was not appropriate to apply the exclusionary rule retrospectively. *Id.* at 636-40.

¶ 25 The Supreme Court yet again rejected a strict interpretation of the void *ab initio* rule in *Lemon v. Kurtzman*, 411 U.S. 192 (1973) ("*Lemon II*"). *Lemon II* originated from a prior case, *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971) ("*Lemon I*"). In *Lemon I*, the Supreme Court held a Pennsylvania statutory scheme to reimburse sectarian schools to be unconstitutional and remanded the case to the lower court for findings consistent with the opinion. 403 U.S. at 625. On remand, the lower court enjoined payment of state funds to sectarian schools for services provided after the issuance of the *Lemon I* opinion but permitted the state to reimburse secular schools for services provided prior to the date of *Lemon I*. *Lemon II*, 411 U.S. at 194. The *Lemon I* plaintiffs then brought *Lemon II*, contesting the lower court's decision and claiming that the unconstitutional statutory scheme for school re-imbursement was void *ab initio*. *Id.*

¶ 26 In *Lemon II*, the Supreme Court stated that:

> [S]tatutory or even judge-made rules of law are hard facts on which people must rely in making decisions and in shaping their conduct. This fact of legal life underpins our modern decisions recognizing a doctrine of nonretroactivity.

Id. at 199. The Supreme Court concluded that the scheme for school re-imbursement was not void *ab initio*, because the school had reasonably relied upon re-imbursement for their services and because the parties acted in good faith. *Id.* at 201-03.

¶ 27 The lower courts have followed the Supreme Court in applying tests of reasonableness and good faith to determine the effect of unconstitutional statutes. *Wagshal v. Selig*, 403 A.2d 338, 341-42 (D.C. 1979) (citing *Chicot County* and noting that tests of reasonableness and good faith "appear[] to be the modern trend" in determining the effect of unconstitutional statutes); *see also, e.g., Am. Mfrs. Mut. Ins. Co. v. Ingram*, 271 S.E.2d 46, 52 (N.C. 1980) (adopting a "test of reasonableness and good faith" to determine the effect of a judicial decision that a statute is unconstitutional, and citing other cases adopting similar tests). At least one court has held that an unconstitutional statute is not void *ab inito* in circumstances similar to the case at bar, where a party seeks to recover funds paid pursuant to an unconstitutional statute. In *Franks v. State*, 772 S.W.2d 428, 431 (Tenn. 1989), the court held a statutory provision providing for judicial salary supplements to be unconstitutional. It then considered whether its holding applied retroactively to allow for the recovery of salary supplements previously paid to judges and justices. *Id.* at 430-31. The court stated that "parties may so deal with each other upon the faith of such a statute that neither may invoke the aid of the courts to undo what they themselves have done." *Id.* at 431 (citation omitted) (quotation omitted). It concluded that, because the parties involved had acted in good faith and upon the assumption that the statutory provision was constitutional, the holding of unconstitutionality applied prospectively only. *Id.*

¶ 28 Here, the Fund and the members of the Fund acted in good faith when they respectively distributed and received funds pursuant to an unconstitutional statute. There is no indication from the record that either the Fund or the Fund members believed the 3% bonus to be unconstitutional when the bonuses were paid, or that bad faith was otherwise involved. Because all parties acted in good faith, principles of reasonableness and fairness dictate that they are now prohibited from "invok[ing] the aid of the courts to undo what they themselves ha[d] done." *Franks*, 772 S.W.2d at 431 (citations omitted) (internal quotations omitted). Stripping Fund members of their previously received bonuses at this late date would place those members in the untenable position of paying back funds, which they received in good faith and upon which they may have reasonably relied. Moreover, recouping the bonuses from Fund members who in all likelihood have spent the money, relied on this income for their livelihood in good faith of the enacted statute's validity, and were not complicit in the pay out of the funds, would be unreasonable and unfair. This Court accordingly holds that the 3% bonus is void prospectively only and is not void *ab initio*. This holding permits Fund members who previously received the 3% bonus to retain it.

However, persons who have not yet received the bonus, including Ada, are barred from receiving the bonus in the future.

D. Permissible Double-Dipping

¶ 29 Finally, we address the Board's claim that the trial court wrongfully awarded Ada benefits attributable to the permissible double-dipping provision contained in article III, section 20 of the NMI Constitution. The Board argues that Ada's claim to double-dipping benefits accrued in 2000, when Ada was first re-employed by the Commonwealth government, and that his claim for double-dipping benefits for the years 2000 through 2002[6] is now time-barred under the six-year statute of limitations in 7 CMC § 2505.[7] Ada counters that his claim did not accrue until he received the February 2008 letter from the Board.

¶ 30 "A suit to enforce rights under a pension plan accrues, and the statute of limitations begins to run, when there has been a clear and continuing repudiation of rights under the pension plan which is made known to the beneficiary." *Martin v. Constr. Laborer's Pension Trust*, 947 F.2d 1381, 1384 (9th Cir. 1991) (citation omitted); *see also Chuck v. Hewlett Packard Co.*, 455 F.3d 1026, 1031 (9th Cir. 2006) ("a cause of action accrues when a pension plan communicates 'a clear and continuing repudiation' of a claimant's rights under a plan . . . such that the claimant could not have reasonably believed but that his benefits had been 'finally denied.'") (internal citation omitted); *Wetzel v. Lou Ehlers Cadillac Grp. Long Term Disability Ins. Prog.*, 222 F.3d 643, 649 (9th Cir. 2000) (holding that under federal law, an ERISA cause of action accrues "either at the time benefits are actually denied . . . or when the insured has reason to know that the claim has been denied") (internal citation omitted); *Morgan v. Laborers Pension Trust Fund*, 433 F. Supp. 518, 523 (N.D. Cal. 1977) ("An action to recover pension benefits does not accrue until there has been a 'clear and continuing repudiation of the right to trust benefits.'") (citation omitted).

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[6] The Board argued that Ada's claim for double-dipping benefits was time-barred from 2000 to 2002, but conceded that Ada was entitled to double-dipping benefits for the years 2003 through 2007. During the hearing before the trial court, the following exchange occurred:

> THE COURT: So [Ada] became a legislator in 2000, correct?
> MR. ADA: Yes.
> THE COURT: And so that if you're arguing for six year statute of limitation you filed the suit in this year? Last year?
> MR. DOTTS: Last year.
> THE COURT: Last year 2009. So that would be *back six years would be 2003*?
> MS. KERN: *Yes*.

Transcript of Motion for Declaratory Relief or Summary Judgment Hearing at 14-15, *Bd. of Trustees of the N. Mariana Islands Ret. Fund v. Ada*, Civ. No. 09-0308 (NMI Super. Ct. July 14, 2010) (emphasis added).

[7] Section 2505 states that "[a]ll actions other than those covered in 7 CMC §§ 2502, 2503, and 2504 shall be commenced within six years after the cause of action accrues . . . ." 7 CMC § 2505. Both parties concede that the statute of limitations in § 2505 governs Ada's claim for permissible double-dipping.

¶ 31 Here, there are no rules or regulations that govern how Fund members may claim double-dipping benefits. The Board has also admitted that it was not consistent in how it paid double-dipping benefits and that there was no system in place to contact retirees and determine whether the retirees wished to claim their double-dipping benefits. Audio Transcript of Oral Argument at 60:00-27, *Bd. of Trustees of the N. Mariana Islands Ret. Fund v. Ada*, Civ. No. 09-0308 (NMI Sup. Ct. Jan. 17, 2012). Under these circumstances, where no rules or regulations governed the payment of double-dipping benefits, and where Ada was not informed orally or in writing that upon reemployment with the Commonwealth he had six years to file a claim, the Fund's failure to voluntarily pay Ada double-dipping benefits when he was re-hired in 2000 did not clearly repudiate his right to the benefits. Such a repudiation did not occur until, at the earliest, Ada received the February 2008 letter stating that he was entitled to retirement benefits but omitting any reference to the double-dipping benefits. *See Chuck*, 455 F.3d at 1038 ("[W]e hold that [the claimant's] cause of action accrued, at the latest, when he received the March 1992 letter announcing that '[n]o further retirement benefits are payable from our U.S. plans.'"); *Lamontagne v. Pension Plan of United Wire, Metal & Mach. Pension Fund*, 869 F.2d 153, 158 (2d Cir. 1989) (holding that claimant's claim for pension benefits accrued upon date of internally drafted letter from retirement fund denying claimant's pension application, despite fact that letter was "inartfully drafted"). We therefore hold that Ada's claim for double-dipping benefits for the years 2000 through 2002 is not barred by the statute of limitations in § 2505.

V

¶ 32 In light of the foregoing, this Court holds that the 3% bonus is unconstitutional under article II, section 15 of the NMI Constitution. The trial court's conclusion that the 3% bonus is constitutional is therefore REVERSED. This Court further holds that the 3% bonus is not void *ab initio* and is void prospectively only. Ada's claim for double dipping benefits for the years 2000-2002 is not barred by the applicable statute of limitations. Because the trial court has not calculated the specific amount of benefits to which Ada is entitled, this case is REMANDED to the trial court with instructions to calculate the amount due and owing to Ada in accordance with our opinion and to enter judgment accordingly.

SO ORDERED this 30th day of August, 2012.

/s/
F. PHILIP CARBULLIDO
Justice Pro Tem

/s/_____
ROBERT J. TORRES
Justice Pro Tem

/s/_____
ALBERTO C. LAMORENA III
Justice Pro Tem