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SUPERIOR COURT OF WASHINGTON IN AND FOR THURSTON COUNTY

ALFRED K. FRIDELL and CLARENCE WILLIAMS, individually and on behalf of a class of similarly situated individuals,

Plaintiffs,

v.

STATE OF WASHINGTON; STATE OF WASHINGTON DEPARTMENT OF RETIREMENT SYSTEMS; and JOHN CHARLES, in his official capacity as Director of the Washington Department of Retirement Systems,

Defendants.

No.

**CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs, Alfred K. Fridell and Clarence Williams, based upon their personal knowledge as to their own actions, and upon information and belief and the investigation of their counsel as to all other allegations, for this class action complaint alleges as follows:

**I. SUMMARY OF ACTION**

1. In 1969, the State of Washington passed the Washington Law Enforcement Officers’ and Fire Fighters’ Retirement System Act, RCW 41.26.010, *et seq.*, and thereby created a comprehensive retirement plan for the exclusive benefit of all Law Enforcement Officers and Fire Fighters in the State. That plan, now referred to as the “LEOFF 1 Plan,” has approximately 9,400

1 participating current and former police officers and fire fighters and their beneficiaries, about 81% of  
2 whom are retired or disabled and presently receiving plan benefits.

3 2. The purpose of the LEOFF 1 Plan is “to provide for an actuarial reserve system *for*  
4 *the payment of death, disability, and retirement benefits to law enforcement officers and fire fighters,*  
5 *and to beneficiaries of such employees,* thereby enabling such employees to provide for themselves,  
6 and their dependents, in case of disability or death, and effecting a system of retirement from active  
7 duty.” RCW 41.26.020 (emphasis added).

8 3. The monies in the LEOFF 1 Plan fund (“Fund” or “LEOFF 1 Fund”), which includes  
9 the Surplus, are by design and contract assets held in trust that must be used for the exclusive benefit  
10 of LEOFF 1 members or their beneficiaries. All monies in the Fund, including the Surplus, must  
11 remain in the fund to be used solely for the exclusive purpose of the fund – to pay current and future  
12 benefits to LEOFF 1 members and beneficiaries. RCW 41.26.040(3).

13 4. Funded over the years by mandatory contributions from employees and employers,  
14 and State appropriations, the State Actuary estimates that the LEOFF 1 Plan had until a recent  
15 market turndown, an actuarial surplus over \$1 billion (the “Surplus”). On April 10, 2001, the State  
16 Actuary, Gerald Allard, informed the House Appropriations Committee that the Surplus has shrunk  
17 and could be as low as \$500 million because of the market downturn.

18 5. Revenue gaps from I-695 and other revenue shortfalls left several holes in the state  
19 budget. The legislature has been forced to look for funding to fill up holes until new revenue  
20 streams can be secured. The surplus in the LEOFF plan was viewed by one state legislator as  
21 allowing the State to pull “a rabbit out of the hat.”

22 6. The State is now poised to pass into law a bill designed to raid the LEOFF surplus  
23 and to use that surplus, not as intended, but for general revenue purposes. The law, currently  
24 denominated ESB 6166 would terminate LEOFF I and to use the surplus for purposes unrelated to  
25 the fund. LEOFF is not the only pension fund with a surplus. Other funds not raided by the  
26 legislature have greater surpluses, including PERS 2, TRS 2/3 and LEOFF 2. However, it is not as

1 politically well-guarded as other funds, and hence was an easy target for raiding by the legislature.  
2 For example, the State has used the surplus of the teachers' retirement fund, to increase benefits, and  
3 has not raided the fund.

4 7. The State's action is unlawful. Among other violations of law, the action taken  
5 violates RCW 41.26.040(3), RCW 49.52.010, common law principles, article I, § 23 of the  
6 Washington Constitution, and constitutes a taking as that term is understood under the state and  
7 federal constitution. All monies contained in the LEOFF 1 Plan – including the Surplus – are vested  
8 property rights possessed by the plaintiffs and the class of LEOFF 1 Plan participants and held in  
9 trust for their – and only *their* – benefit.

10 8. Hence, in order to protect the benefits being received by and owed to plaintiffs and  
11 the proposed class of LEOFF 1 retirees and beneficiaries, plaintiffs seek – on behalf of themselves  
12 and the proposed class – a declaration of rights and an order enjoining the State from dissipating the  
13 LEOFF 1 Plan Surplus, among other things.

## 14 II. PARTIES

15 9. Plaintiff Alfred K. Fridell is a resident of Snohomish County and a retired member of  
16 the LEOFF 1 plan currently receiving retirement benefits thereunder. Before retiring, Mr. Fridell  
17 was a 27-year veteran of the Seattle Police Department, serving Seattle and the public from 1956 to  
18 1983.

19 10. Plaintiff Clarence Williams is a resident of King County and a retired member of the  
20 LEOFF 1 plan currently receiving retirement benefits thereunder. Before retiring, Mr. Williams was  
21 a 30-year veteran of the Seattle Fire Department, serving Seattle and the public from 1968 to 1998.

22 11. Defendant the State of Washington Department of Retirement Systems is an agency  
23 of the State of Washington and, pursuant to RCW 41.50.055, is responsible for administering the  
24 LEOFF 1 Plan. At the direction of the State, it will take the actions described below to terminate the  
25 LEOFF 1 Plan and dissipate the Fund Surplus.

1 12. Defendant John Charles is the Director of the Washington Department of Retirement  
2 Systems.

3 13. Defendant State of Washington created the LEOFF 1 Plan via statute and, pursuant to  
4 RCW 41.45, has made contributions to the LEOFF 1 Plan on behalf of individual LEOFF 1  
5 participants. It passed the legislation that plaintiffs seek to have declared unlawful. The State, or its  
6 political subdivisions, is responsible for the operation, administration, and investment of LEOFF 1  
7 Plan funds.

### 8 III. JURISDICTION AND VENUE

9 14. This Court has jurisdiction over all of plaintiff's claims pursuant to RCW 4.92.010.  
10 There are no administrative remedies for plaintiff to exhaust as requirement precedent to suit in this  
11 Court.

12 15. Venue is proper in Thurston County pursuant to RCW 4.92.010(1).

### 13 IV. FACTUAL ALLEGATIONS

#### 14 A. The LEOFF 1 Plan

15 16. In 1969, the State of Washington created a single retirement plan for the benefit of all  
16 Law Enforcement Officers and Fire Fighters (hence, the "LEOFF" acronym) by passing the  
17 Washington Law Enforcement Officers' and Fire Fighters' Retirement System Act, codified at RCW  
18 41.26 *et seq.* (the "Act").

19 17. The purpose of the Act is "to provide for an actuarial reserve system for the payment  
20 of death, disability, and retirement benefits to law enforcement officers and fire fighters, and to  
21 beneficiaries of such employees, thereby enabling such employees to provide for themselves, and  
22 their dependents, in case of disability or death, and effecting a system of retirement from active  
23 duty." RCW 41.26.020. The benefits include a pension, medical, and death or disability payments,  
24 among other things.  
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1           18.     The single LEOFF Plan transferred the benefits firefighters and police officers were  
2 owed under RCW 41.16 *et seq.*, RCW 41.18 *et seq.*, and RCW 41.20 *et seq.*, and consolidated these  
3 benefits in RCW 41.26 *et seq.* To avoid constitutional problems with the Act, the State guaranteed  
4 all firefighters and police officers equal – if not greater – benefits under the single LEOFF Plan and  
5 wrote into the Act RCW 41.26.040(3) which guaranteed that “all funds held by any firemen’s or  
6 policemen’s relief and pension fund shall remain in the fund for the purpose of paying the obligation  
7 of the fund.”

8           19.     The single LEOFF Plan, created in March 1970, was split into two plans in 1977  
9 when the State closed the original LEOFF plan to new members and created a separate plan for  
10 eligible employees hired after September 30, 1977. For those employees hired before October 1,  
11 1977, the plan became known as the “LEOFF 1 Plan” (hereinafter, the “Plan”). Thereafter,  
12 subsequent eligible employees became members of “LEOFF 2.”

13 **B.     Contributions to the LEOFF 1 Plan**

14           20.     Pursuant to RCW 41.26.075(1)(a) and (b), the Act required that the Plan be funded by  
15 contributions from the following three sources: (i) employees (that is, the Plan participants –  
16 plaintiffs and putative class members here); (ii) employers (*e.g.*, counties, municipalities and school  
17 districts); and (iii) the State in accord with RCW 41.45.

18           21.     The Act required employees to contribute to the Plan six percent of their “basic  
19 salary” monthly, and their employers to make equal, six percent contributions. The State contributed  
20 to the Plan through appropriations made in each biennial budget from 1976 through 1999.

21           22.     According to the Office of the State Actuary, approximately 11 percent of total  
22 contributions made to the Fund have come from employees; approximately 11 percent from  
23 employers; and 77 percent from State appropriations. Investment returns are not included in these  
24 numbers, only contributions.

1           23.     The State’s contribution to the LEOFF 1 Fund made for the benefit of LEOFF 1  
2 members may be overstated. In 1969, RCW 41.26.080, which covered the funding of the LEOFF  
3 system, distinguished between “current service liability” and “prior service liability.” Prior service  
4 liability is the liability the State assumed when the LEOFF system was created for the unfunded  
5 pension benefits owed under RCW 41.16, 41.18, and 41.20. Until 1989, if not later, the State’s  
6 appropriations to the LEOFF system included the combined liability for both “current service  
7 liability” (*i.e.*, LEOFF 1 benefits) and “prior service liability.” However, the State Actuary’s office  
8 does not appear to have accounted for which liability the appropriations were earmarked.

9           24.     All contributions to the Plan made by an employee, employer or the State were  
10 suspended by statute in June 2000. RCW 41.26.080(2).

11     **C.     Investment of LEOFF 1 Plan Assets**

12           25.     Originally, under the Plan, a public employees’ retirement board managed the funds.  
13 RCW 41.40.030, .072 (1979).

14           26.     In 1981, the Legislature changed the system and created the Washington State  
15 Investment Board (“WSIB”), to manage the LEOFF 1 Fund along with all other State retirement  
16 funds, medical and accident funds, and permanent trust funds.

17           27.     Pursuant to RCW 43.33A.170, the WSIB pools these funds and manages these funds  
18 collectively in a “commingled trust fund.” The WSIB, as trustees of the funds, is required to manage  
19 these funds in accordance with the “prudent person” standard, RCW 43.33A.140, which is the  
20 historic standard associated with fiduciary obligations in trust contexts.

21           28.     Just as before the creation of WSIB, the LEOFF 1 Fund that WSIB oversees is money  
22 held in trust for Plan members’ and their beneficiaries’ exclusive benefit. Defendant Department of  
23 Retirement Systems (“DRS”) acknowledges that this is part of the historic benefit bargained for  
24 under the LEOFF 1 system.

1           29.     DRS notes, in the LEOFF 1 Member Handbook, “your future benefits are funded by  
2 contributions – made by you, your employer and the State during your period of membership – and  
3 the investment earnings from those contributions. These contributions are held in trust and invested  
4 by the State Investment Board.”

5           30.     According to WSIB, the annual rate of return on the commingled trust fund  
6 investments varied from year to year, ranging from a high of 47.7% in 1983 to a low of – 2.2% in  
7 1984. The average annual rate of return from 1982-1999 was approximately 14.75%. Plaintiffs are  
8 not aware of any accounting that reflects investment returns specifically attributable to LEOFF 1  
9 members’ contributions, employer contributions, or State contributions.

10     **D.     LEOFF 1 Plan Assets and Projected Liabilities**

11           31.     According to the Office of the State Actuary, as of December 31, 1999, the actuarial  
12 value of LEOFF 1 Fund assets was \$5.15 billion, and the market value of those assets was \$5.460  
13 billion.

14           32.     At that time, the actuarial value of LEOFF 1 Fund credited projected benefit liabilities  
15 – that is, the money required to pay projected retirement and disability benefits – was \$4.136 billion.

16           33.     Hence, the Office of the State Actuary reported that the LEOFF 1 Plan had an  
17 actuarial *surplus* at the end of 1999 of \$1.014 billion (the actuarial value of assets less the actuarial  
18 value of credited projected benefit liabilities, referred to as the “Surplus”).

19           34.     Approximately \$2.429 billion has already been paid out of the Fund in benefits.

20           35.     Approximately 81% of LEOFF 1 participants are presently receiving payouts from  
21 the plan as retirees, disabled persons or surviving dependents.

22     **E.     The Legislature Greedily Eyes the LEOFF 1 Plan Surplus**

23           36.     Unfortunately, the Surplus has garnered fervent interest from the State as a means of  
24 filling budget holes, satisfying general state spending and the legal obligations of *other*  
25 governmental entities at the expense of LEOFF 1 Plan participants.  
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1           37.     One of the major benefits provided under the LEOFF 1 Plan is a program of  
2 employer-funded medical benefits. RCW 41.26.150 requires that employers pay participants'  
3 medical costs, including long-term care, that are not covered by other sources such as workers'  
4 compensation. Nonetheless, the employers have *not* pre-funded this medical benefit, resulting in a  
5 liability that is almost completely unfunded.

6           38.     The State is moving to seize and take the Surplus by terminating the LEOFF 1 Plan,  
7 use it to pay employer's unfunded medical liability, and put Fund monies to other uses that are  
8 equally inconsistent with the purpose of the LEOFF 1 Plan.

9           39.     The Legislature, via the Second Engrossed Substitute Senate Bill 6166 adopted by the  
10 Senate on June 8, 2001, seeks to transfer approximately 12 percent of the Surplus for the employers'  
11 benefit so that the employers do not have to raise money to satisfy their obligation to provide  
12 medical benefits to plaintiffs and the class. Another 12 percent of the Surplus will be used to fund a  
13 "lump-sum defined benefit" for LEOFF 1 participants. The remainder of the Surplus – about 76  
14 percent of an estimated \$1 billion, or \$760 million – would be transferred to the new State Surplus  
15 Assets Reserve Fund as a general budget reserve for state government and, ostensibly, to also  
16 guarantee the actuarial soundness of a new, "restated" LEOFF plan.

17           40.     Stripping Surplus assets out of the Fund in order to secure government spending and  
18 satisfy employers' statutory obligations to provide medical benefits to plaintiffs and the class are  
19 contrary to the contract plaintiffs and other retired LEOFF 1 members agreed to under RCW 41.26.

20           41.     The rights of plaintiffs and class members are contractual in nature. *Bakenhus v.*  
21 *Seattle*, 48 Wn.2d 695, 296 P.2d 536 (1956). These rights may not be modified to plaintiffs'  
22 detriment once plaintiffs retired from active duty.

23           42.     When LEOFF 1 was established in 1970, and during the time relevant to plaintiffs  
24 and class members, the law provided that LEOFF 1 employers would pay all necessary medical  
25 services for LEOFF 1 members and retirees not payable from the other sources identified in the  
26 statute. RCW 41.26.150. This promise of funding future medical benefits was made because the



1 State assumed the employers' obligation to fund the pre-existing pension system under RCW 41.16,  
2 RCW 41.18, and RCW 41.20, which at the time had an unfunded liability of about \$100 million.  
3 Municipal employers have not pre-funded LEOFF 1's medical benefits and the future costs present  
4 substantial unfunded liabilities to these employers.

5 43. The latest actuarial review of LEOFF 1 Plan estimates that the present value of these  
6 local governments' liabilities for future medical benefits owed to Plan participants is at least \$708  
7 million.

8 44. In the 2000 supplemental budget, the Joint Committee on Pension Policy ("JCPP")  
9 was directed to review options for funding LEOFF 1 participants' medical benefits from the Surplus.  
10 House Bill 1072 was proposed by the JCPP as the result of its study and review.

11 45. Senate Bill 6166 incorporates House Bill 1072 and its companion Senate Bill 5191 in  
12 substantial measure in its creation of the "LEOFF Medical Benefits Risk Pool."

13 46. Senate Bill 6166 does not provide plaintiffs and other retired LEOFF 1 participants a  
14 single benefit that they do not already have, and takes away the employer-funded medical benefit  
15 they contracted for and monies that are held in trust for their exclusive benefit.

16 **F. The Legislature is Prohibited by Law From Making the Contemplated Modifications to**  
17 **the LEOFF 1 Plan**

18 47. State law prohibits the State from diverting any Surplus monies out of the LEOFF 1  
19 Plan to anyone but the Plan participants.

20 48. The Fund is not an asset of the State.

21 49. All monies in the Fund – including the Surplus – are vested property rights possessed  
22 by plaintiffs and the class of LEOFF 1 Plan participants and held in trust for their – and only *their* –  
23 benefit. No money in the Fund may be used to pay employer obligations.

24 50. All of the contributions made to LEOFF 1 Fund, and the investments and interest  
25 accrued thereon, are for the sole benefit of the Plan participants and their beneficiaries – plaintiffs  
26

1 and class members here – and are the economic product, no matter the direct source, of the  
2 participants’ services to their employers and the public.

3 51. In short, the LEOFF 1 Fund is an express trust for the exclusive benefit of plaintiffs  
4 and class members.

5 52. Historically, the State has recognized that interest earned on Fund assets were to be  
6 used for payment of benefits to LEOFF 1 participants. From 1971 to 1975, the Legislature directed  
7 that interest earnings be used by the LEOFF Fund to pay LEOFF benefits. Additionally, State  
8 actuarial valuations of the Fund have assumed that investment earnings would be used to pay  
9 benefits. Indeed, even before the creation of LEOFF, the State recognized that interest earned on  
10 firefighters’ and police officers’ pension funds were the property of the firefighters and police  
11 officers. *E.g.*, RCW 41.18.010.

12 53. Equally, Washington Attorney General Opinions, beginning in 1971, identify the  
13 LEOFF 1 Fund monies as monies “held in trust for the Fund’s beneficiaries” that cannot be used for  
14 any purpose other than paying participants’ benefits. In addition, the Attorney General’s office, in  
15 1975 Op. Atty. Gen. Wash. No. 50, found that in the context of the teachers’ retirement system, in  
16 the event of a surplus, the only options for the trustee was to increase benefits, not reduce them.

17 54. In 1974, the Attorney General issued an opinion that as a result of the decision in  
18 *Bakenhus v. Seattle*, 48 Wn.2d 695 (1956), opined that pension rights may be modified prior to  
19 retirement “but only for the purpose of keeping the system flexible and maintaining its integrity.”

20 55. Similarly, RCW 49.52.010 declares that all employer contributions for medical,  
21 disability or death benefits are held in trust for the benefit of the employee. Thus, LEOFF 1  
22 employers’ contributions are by law held in trust for the exclusive benefit of LEOFF 1 employees.

23 56. Furthermore, the LEOFF 1 Plan is tax qualified under Internal Revenue Code § 401.  
24 In order for the Plan to be tax qualified, assets of the plan must be held in trust, absent an insurance  
25 annuity contract, and such assets must be used for the “exclusive benefit of employees and their  
26 beneficiaries.”

1           57. Under RCW 41.26, payment of benefits to LEOFF 1 participants is the sole means of  
2 disposing of LEOFF 1 monies. In fact, RCW 41.26.040(3) requires that all LEOFF 1 monies “shall  
3 remain in [the] [F]und for purposes of paying the obligations of the [F]und.” Any Surplus monies  
4 thus can only be removed from the Fund in the form of benefits to LEOFF 1 members and  
5 beneficiaries.

6           58. Additionally, RCW 41.45.010(4) explains that the goal of the LEOFF 1 Fund and  
7 intent of the Legislature was to fund “benefit increases” for LEOFF 1 members, where feasible, in  
8 recognition of having received the benefit of their public service.

9           59. It is now feasible, and it has been feasible for some time, to fund benefit increases for  
10 plaintiffs and other LEOFF 1 members with the Surplus.

11           60. The State’s move to take the Surplus violates, among other legal principles,  
12 RCW 41.26.040(3), RCW 41.45.010(4), RCW 49.52.010, and the Washington Constitution,  
13 Article I, Section 23.

14           61. Additionally, the 2000 amendment to the Act creating RCW 41.26.080(2) that  
15 suspended further contributions to the Fund was unlawful because all LEOFF 1 participants and  
16 beneficiaries have a vested interest in the systematic funding of the Fund, and that interest was  
17 eliminated without providing all LEOFF 1 participants a corresponding and commensurate benefit.

18 **G. If the Legislature Can Take the LEOFF 1 Surplus, It Can take All State Pension**  
19 **Surpluses**

20           62. Following the recent years of economic prosperity, many of the State public pension  
21 plans presently have an actuarial surplus. In recognition of such surpluses and the public employees’  
22 vested right to such surpluses, the Legislature already has enacted legislation that would provide  
23 teachers with increased benefits from the surplus in their public pension fund. RCW 41.31 &  
24 RCW 41.31A.



1 (b) Whether, as alleged, all of the contributions made to the LEOFF 1 Plan, and  
2 the interest accrued thereon, is for the sole benefit of the Plan participants and their beneficiaries –  
3 plaintiff and class members here – and is the economic product, no matter the direct source, of the  
4 participants’ services to their employers and the public;

5 (c) Whether RCW 41.26.040(3)’s requirement that all LEOFF 1 monies “shall  
6 remain in [the] [F]und for purposes of paying the obligations of the [F]und” precludes defendants  
7 from redirecting the money to another purpose or raiding the Surplus and transferring money to the  
8 State’s general fund;

9 (d) Whether RCW 41.45.010(4) requires the State to increase benefits when  
10 possible, and if so, whether the Legislature’s move to divert the money from the Surplus for the  
11 benefit of municipalities and the State is inconsistent with the stated intent of the Fund;

12 (e) Whether RCW 49.52.010 requires that all LEOFF 1 employers’ contributions  
13 for medical, disability or death benefits be held in trust for the benefit of the LEOFF 1 employees;

14 (f) Whether the Legislature’s move to divert the Surplus violates RCW  
15 41.26.040(3), RCW 49.52.010 and other legal principles, including but not limited to state and  
16 federal Constitutional prohibitions on “takings” and other Washington constitutional mandates;

17 (g) Whether the 2000 amendment to the Act creating RCW 41.26.080(2) that  
18 suspended further contributions to the Fund was unlawful; and

19 (h) The appropriate form of injunctive, declaratory and other relief.

20 70. *Typicality.* Plaintiffs’ claims are typical of the claims of the class because plaintiffs  
21 and all class members receive benefits from the LEOFF 1 Plan and have a property interest in the  
22 Fund and the Surplus.

23 71. *Adequacy.* Plaintiffs are adequate representatives of the class because their interests  
24 do not conflict with the interests of the members of the class they seek to represent. Plaintiffs have  
25 retained counsel competent and experienced in complex class action litigation, and plaintiffs intend  
26

1 to prosecute this action vigorously. Plaintiffs and their counsel will fairly and adequately protect the  
2 interests of members of the class.

3 72. *CR 23(b)(2) Certification.* The class may be certified under CR 23(b)(2) because:

4 a. The prosecution of separate actions by the individual members of the class  
5 would create a risk of inconsistent or varying adjudication with respect to individual class members  
6 which would establish incompatible standards of conduct for defendants;

7 b. The prosecution of separate actions by individual class members would create  
8 a risk of adjudications with respect to them which would, as a practical matter, be dispositive of the  
9 interests of other class members not parties to the adjudications, or substantially impair or impede  
10 their ability to protect their interests; and

11 c. Defendants have acted or refused to act on grounds generally applicable to the  
12 class, thereby making appropriate final and injunctive relief with respect to the members of the class  
13 as a whole.

14 **COUNT I**

15 **(FOR DECLARATORY AND INJUNCTIVE RELIEF PURSUANT TO THE**  
16 **UNIFORM DELCARATORY JUDGMENT ACT, RCW 7.24.010, ET SEQ.)**

17 73. Plaintiffs reassert and incorporate herein all allegations in the preceding paragraphs.

18 74. Pension and other retirement plans are unique property rights and are in essence  
19 deferred compensation and constitute vested property rights. Any interference with these rights by  
20 the State constitutes a taking.

21 75. Further, it is clear from the statutory framework, that the LEOFF funds were held in  
22 trust, and were to be used for the exclusive benefit of plan participants.

23 76. Once an employee begins work his or her employee plan may only be modified only  
24 under limited circumstances without consent: (1) to keep the system flexible; and (2) maintain the  
25 fund's integrity. Further, if there is a disadvantageous modification, there must be a corresponding  
26 benefit of equal value. Where a change is disadvantageous, an employee will be presumed to have

1 not consented to the change. The changes in LEOFF I are disadvantages, not offset by equal  
2 advantages, and were not obtained with the consent of the LEOFF I participants.

3 77. Plaintiffs, therefore, seek a declaration that:

4 (a) The Washington Constitution, RCW 41.26 *et seq.*, and common law principles  
5 require that all monies in the Fund, including the Surplus, shall remain in the Fund for purposes of  
6 paying the obligations of the Fund – benefits to plaintiffs and class members – and that, therefore,  
7 the State is prohibited from terminating the Plan and redirecting the Surplus to serve another  
8 purpose.

9 (b) All monies in the Fund, including the Surplus, are the vested property of  
10 plaintiffs and class members and are held in trust for the exclusive benefit of LEOFF 1 members and  
11 their beneficiaries and that, therefore, the Legislature is prohibited from redirecting any money in the  
12 Fund, including the Surplus, to any use other than benefits for LEOFF 1 members and their  
13 beneficiaries without the consent of plaintiffs and the class.

14 (c) The Surplus in the Fund may be disbursed but only in the form of increased  
15 benefits to LEOFF 1 members in accordance with RCW 41.26 *et seq.* and RCW 45.010(4). When  
16 and if disbursed, such Surplus money shall be disbursed to plaintiffs, class members and other  
17 LEOFF 1 participants and beneficiaries in the form of increased benefits.

18 (d) Any State action of directing the Surplus to anything other than payment of  
19 benefits to plaintiffs and the class, such as sought in SB 6166, is an unconstitutional taking of  
20 plaintiffs' property without just compensation.

21 (e) That any State action directing the surplus to anything other than payment of  
22 benefits to plaintiffs and the class constitutes a bill of attainder, ex post facto law, or law impairing  
23 the obligations of contracts, in violation of Article I, Section 23 of the Constitution.

24 (f) The LEOFF 1 Fund is an express trust created for the exclusive benefit of  
25 LEOFF 1 members and beneficiaries.

1 (g) RCW 41.26.080(2) is unlawful because it suspended contributions to the  
2 LEOFF 1 Fund in violation of plaintiffs' vested right to systematic funding and because it fails to  
3 provide plaintiffs and class members an equal and commensurate benefit.

4 78. The purpose of the Uniform Declaratory Judgment Act is to resolve disputes by  
5 obtaining a declaration of rights before a cause of action accrues.

6 79. An actual, present and existing dispute, or the mature seeds of one, exists between the  
7 parties having genuine and opposing interests.

8 80. The interests involved are direct and substantial, amounting to over \$500 million in  
9 accrued Fund assets.

10 81. A judicial determination of the rights of the parties will be final and conclusive.

11 **PRAYER FOR RELIEF**

12 Plaintiff respectfully requests an Order providing for:

13 a. Certifying the proposed class, with the cost of notice charged to defendants,  
14 certification of the named plaintiffs as class representatives, and certification of their counsel as  
15 attorneys for the class under CR 23;

16 b. The declaratory and injunctive relief set forth in Count 1 above;

17 c. An accounting of all LEOFF 1 Plan participants' contributions and interest earned on  
18 their contributions, individually and collectively;

19 d. An accounting of all State contributions to LEOFF 1 and the interest earned on the  
20 State's contributions;

21 e. An accounting of all employer contributions to LEOFF 1 and the interest earned on  
22 the employers' contributions, individually and collectively;

23 f. Attorneys' fees and costs as permitted by law; and

24 g. Any other and further relief the Court deems just and equitable.



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DATED this \_\_\_ day of June, 2001.

HAGENS BERMAN LLP

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