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OF NEW JERSEY

JOB NUMBER ONE:

NJEA'S LEADING ROLE IN NEW JERSEY'S PENSION CRISIS

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"Protecting and enhancing members' pensions and benefits has been Job Number One for NJEA since 1896."

-- NJEA President Joyce Powell, 2006 [1]

The New Jersey Education Association (NJEA), New Jersey's most powerful special interest, has lived up to Powell's words – much to the detriment of New Jersey citizens.

"The fiscal future of New Jersey is bleak," concluded the recent bipartisan legislative workgroup.[2] This grim conclusion was largely based on the fact that New Jersey's public pension and health benefit system is a looming disaster that threatens the state's future. Under generally accepted national accounting standards, the total amount of the state's unfunded public pension and health care liabilities is $190.1 billion.[3] The entire annual state budget is $38 billion. This is a major reason why the Mercatus Center ranks New Jersey dead last among states in long-term fiscal solvency and why New Jersey has the second-lowest bond rating of any state (above only broke Illinois).[4]

<u>The Facts: Pensions</u>

New Jersey's public pensions are in the worst condition of any state in the nation,[5] with funding at 38 percent of what the state owes, resulting in unfunded liabilities of $99.6 billion. The state's largest public pension fund—the Teachers' Pension and Annuity Fund (TPAF)—is 26 percent funded and is expected to be fully depleted and unable to cover its payments by 2041.[6]

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[1] New Jersey Education Association, "Members Prepare for 'PenBen' Campaign," *NJEA Reporter* 49, no. 11 (June 2006): 1.

[2] New Jersey Economic & Fiscal Policy Workgroup, *Path to Progress*, August 9, 2018, 1. Hereinafter, *Path to Progress*.

[3] In accordance with Government Accounting Standards Board (GASB) statements 67 and 68. The unfunded liabilities show a $15 billion reduction from the previous year due entirely to how the liabilities are calculated not to any increase in the amount of money being paid into the system. This does not include $45 billion of bonded debt or unfunded liabilities of $50 billion at the local government level. The Office of Public Finance of the State of New Jersey, *State of New Jersey Debt Report Fiscal Year 2018*, May 31, 2019, 15. Hereinafter, NJ Debt Report.

[4] Eileen Norcross and Olivia Gonzalez, *Ranking the States by Fiscal Condition, 2018 Edition*, (Mercatus Research, Mercatus Center at George Mason University, Arlington, VA, October 2018) 19.

[5] Along with Kentucky at 31 percent for 2016. Pew Charitable Trusts, *State Retirement Fiscal Health and Funding Discipline, New Jersey*, September 18, 2018, https://www.pewtrusts.org/en/research-and-analysis/data-visualizations/2018/state-retirement-fiscal-health-and-funding-discipline#/state-profiles/new-jersey?year=2016

[6] NJ Debt Report, 72. It is important to contrast the GASB measures with the the state's own statutory measures of its public pension liabilities and funding levels. These aggressively discount the pension liabilities by the 7.5 percent investment return assumption, reducing both the overall unfunded liabilities and the contribution amounts needed to fund them. According to the statutory measures, New Jersey's unfunded pension liabilities are $42.8 billion and 54.4 percent funded. NJ Debt Report, 74.

Even for as wealthy a state as New Jersey is, these are crippling debts. As a percentage of state gross domestic product (GDP), New Jersey's public pension liabilities have shot up from 22 percent in 2003 to 42 percent in 2016, the highest pension debt burden of any state.[7] Including New Jersey's bonded debt, the state's overall debt burden is 55 percent of state GDP, and an alarming $26,000 per capita, the highest in the nation.[8]

Moreover, given the state's high investment return assumptions and the riskier portfolios required to meet them, New Jersey may well be one market downturn away from near-term pension system insolvency and a severe fiscal crisis.

NJ's Public Pensions Fail the Stress Test. New Jersey's public pensions' vulnerability to a market downturn was illuminated by a Pew Charitable Trust/Harvard Kennedy School study that tested them against future stress scenarios. The study used lower investment return assumptions, as might be caused if there were a market downturn. The study concluded that New Jersey (along with Kentucky) was the state "most at risk of pension system insolvency." Indeed, there was a "real risk" that plan assets could be "fully depleted" by 2029, at which point the pensions would have to be funded on a pay-as-you-go basis from annual budget appropriations.[9] This would would likely result in a severe fiscal crisis for the state.

Pension Funds Are Dependent on Investment Returns to Avoid Depletion. Total contributions into the system are substantially less than benefits paid out and the difference must be made up by investment returns. The Pew Charitable Trusts analyzed the 2016 data and determined that New Jersey (along with Kentucky) had *the most negative cash flow of any state* at -6.6 percent of assets. This meant that the funds had to earn 6.6 percent or else the funds' assets would be depleted.[10]

Figure 1 shows how TPAF is totally dependent on investment returns, and when they are not sufficient, TPAF's assets are depleted. From FY2014-2018, total contributions from employees and the state amounted to less than half of the benefits paid out (even with the commitment of lottery proceeds to TPAF in FY2017). Market returns were positive

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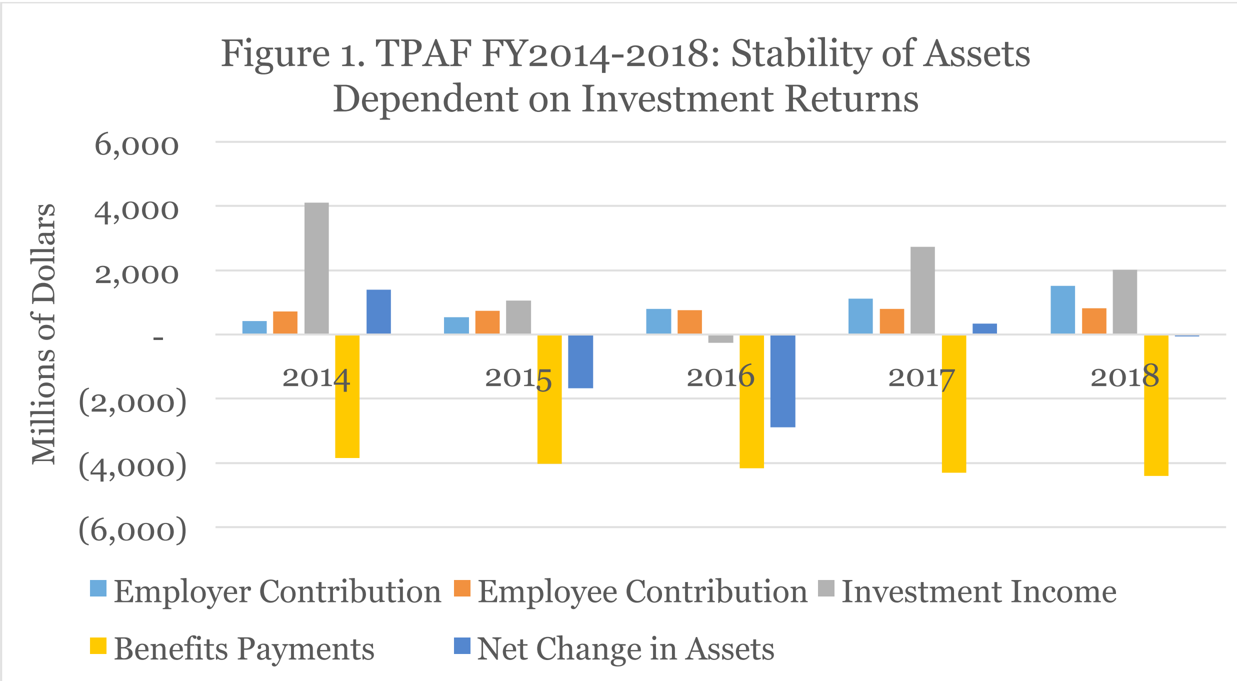
[7] Tied with New Mexico and Alaska. Using Pew Charitable Trusts data. Ted Dabrowski and John Klingner, "Overpromising has crippled public pensions. A 50-state survey," *Wirepoints*, July 2018, 18.
[8] From Standard & Poors using 2017 data. John Reitmeyer, "S&P Notes Progress But Ranks NJ's Among the Worst Pension Systems," *NJSpotlight*, November 1, 2018.
[9] Greg Mennis, Susan Banta, David Draine, "Assessing the Risk of Fiscal Distress for Public Pensions: State Stress Test Analysis," Harvard Kennedy School, Mossavar-Rahmani Center for Business and Government, M-RCBG Associate Working Paper Series, No. 92, May 2018, 25-26. The study used an investment return of 5 percent rather than the state's overly optimistic 7.5 percent, and assumed that the state would only make sustainable budget contributions fixed as a percentage of the state's own-source revenues.
[10] Pew Charitable Trusts, *The State Pension Funding Gap 2016*, April, 12 2018, 22, https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/04/the-state-pension-funding-gap-2016.

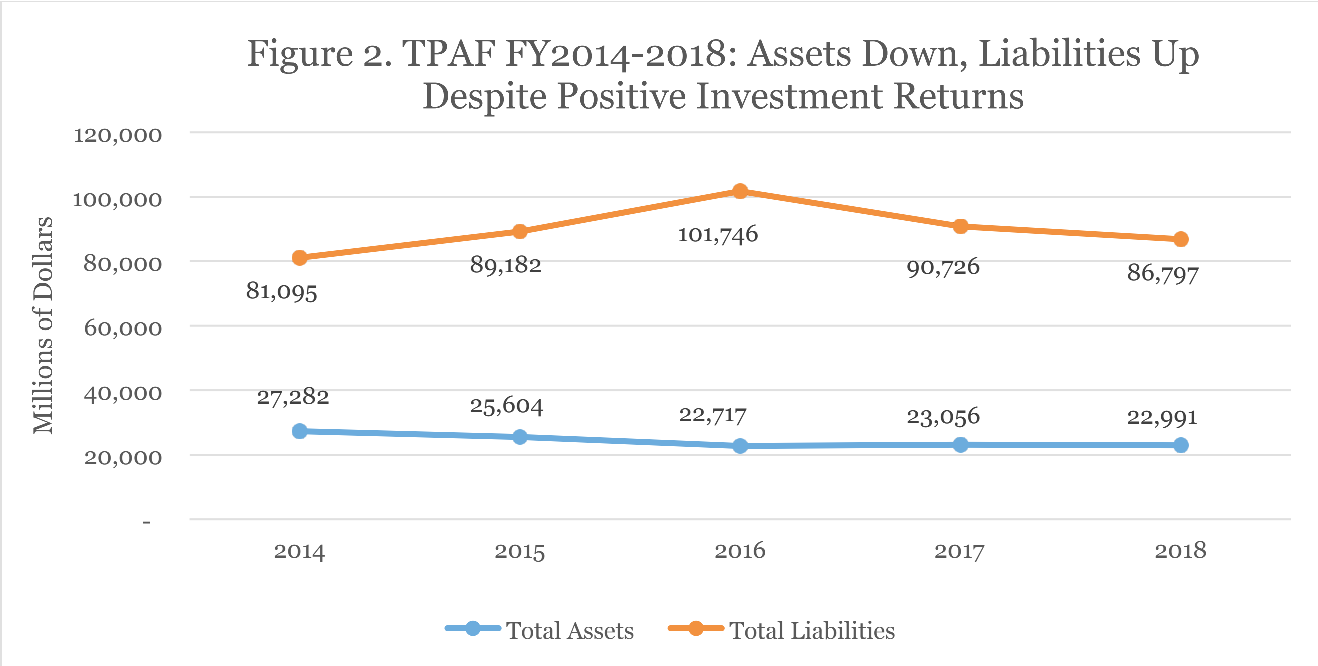
every year except FY2016, but not positive enough because the fund's assets were depleted in three out of the five years. Of note, in FY2016, when investment returns were down at modest -1.15 percent, the fund's assets were depleted by $2.9 billion.



Source: State of New Jersey, Division of Pensions & Benefits

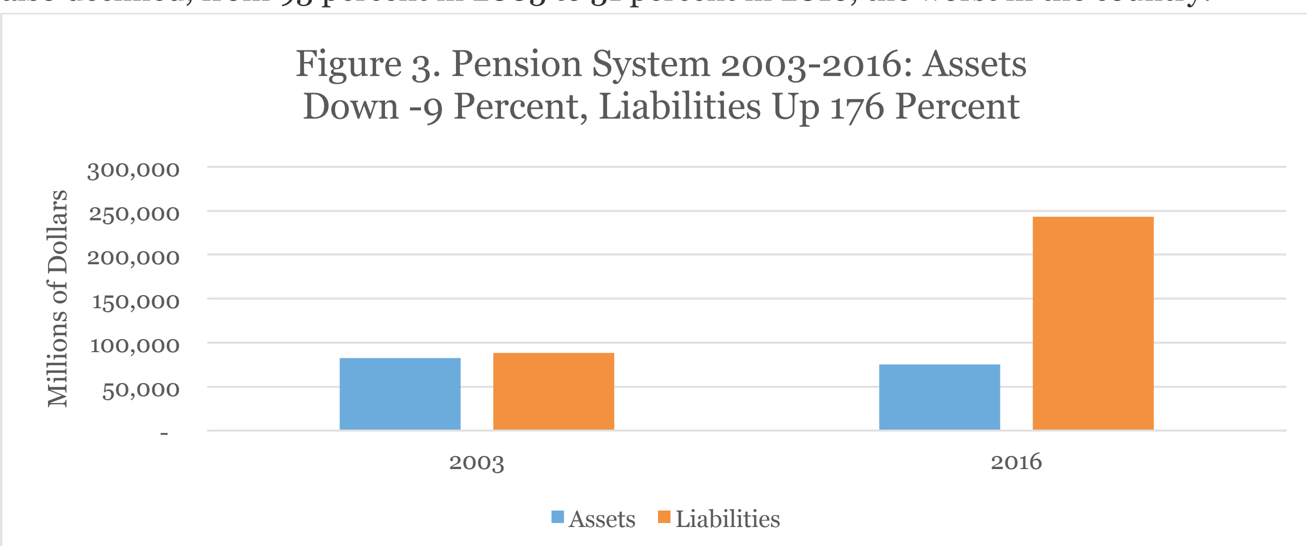
TPAF Is Cash Flow Negative and Depleting Assets. Figure 2 shows the five-year, cumulative effect of negative cash flows on fund assets and liabilities. From FY 2014-2018, when the markets and returns were generally strong, TPAF's assets decreased by -$4.3 billion and its liabilities increased $5.7 billion, resulting in a current funding ratio of 26.5 percent.[11]

[11] Investment returns: FY2014 16.79 percent, FY2015 4.08 percent, FY2016 -1.15 percent, FY2017 13.01 percent, FY2018 9.11 percent. State of New Jersey, Division of Pensions & Benefits, *Financial Statements and Supplementary Schedules (With Independent Auditor's Report Thereon)*, KPMG, June 30, 2018, 61.



Source: State of New Jersey, Division of Pensions & Benefits

Overall, these negative cash flows in the face of inexorably rising liabilities have had a devastating effect on the long-term viability of the pension system. As Figure 3 shows, while pension liabilities grew from $88.3 billion in 2003 to $243.6 billion in 2016, an increase of 176 percent, pension fund assets have actually *decreased* from $82.5 billion in 2003 to $75.3 billion in 2016, a decline of -9 percent. Accordingly, the funded ratio also declined, from 93 percent in 2003 to 31 percent in 2016, the worst in the country.[12]



Source: Pew Charitable Trusts data as presented in *Wirepoints* report.

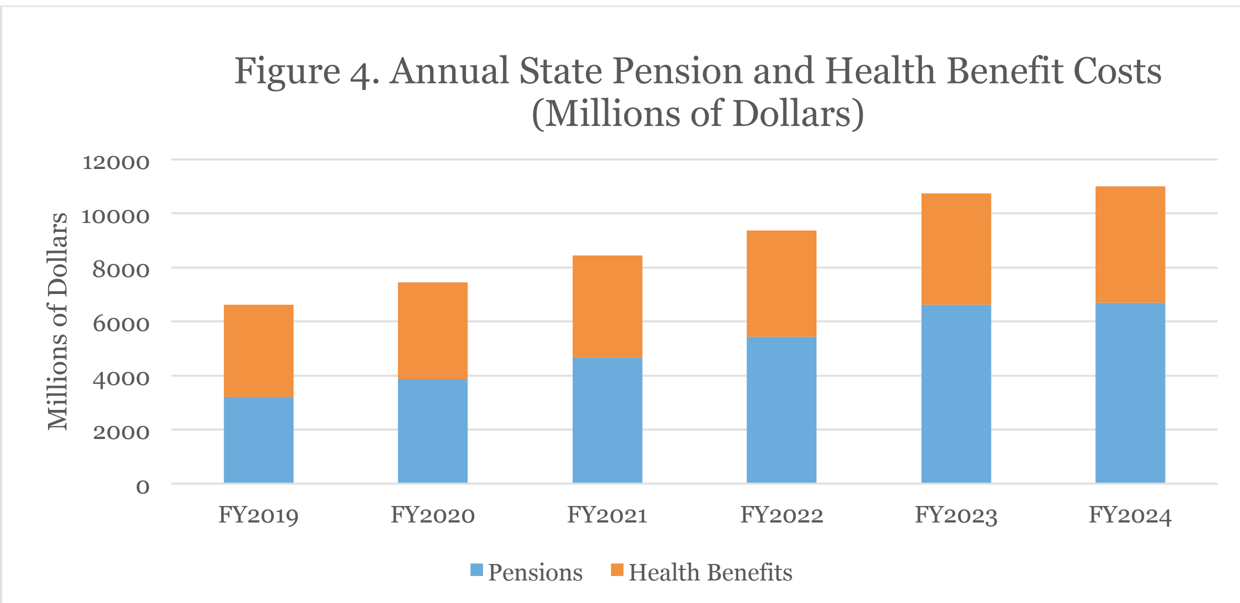
<u>The Facts: Healthcare</u>

[12] Along with Kentucky. Ted Dabrowski and John Klingner, “Overpromising has crippled public pensions. A 50-state survey,” *Wirepoints*, July 2018, 16.

The state pays for New Jersey's active employee and retiree health care liabilities on a pay-as-you-go basis. No money is set aside and invested to help meet these obligations. As the number of retirees and their life spans grow and the cost of health care increases, these liabilities grow. The state reports that this liability currently stands at $90.5 billion.[13]

The Facts: An Unsustainable Budget Burden

As the situation stands, New Jersey has no way out of this massive problem. The 2015 New Jersey Pension and Health Benefit Study Commission (the "Study Commission") concluded that fully funding all the benefits promised is "no longer within the State's means."[14] As seen in Figure 4, the total cost of these benefits to the state currently stands at $6.6 billion. These costs are projected to rise to $11 billion by FY2024.[15]



Source: *Path to Progress*

Figure 5 shows that, as a percentage of the state budget, annual state pension and health benefit costs rise from 20.7 percent in FY2019 to 26.3 percent in FY2024.

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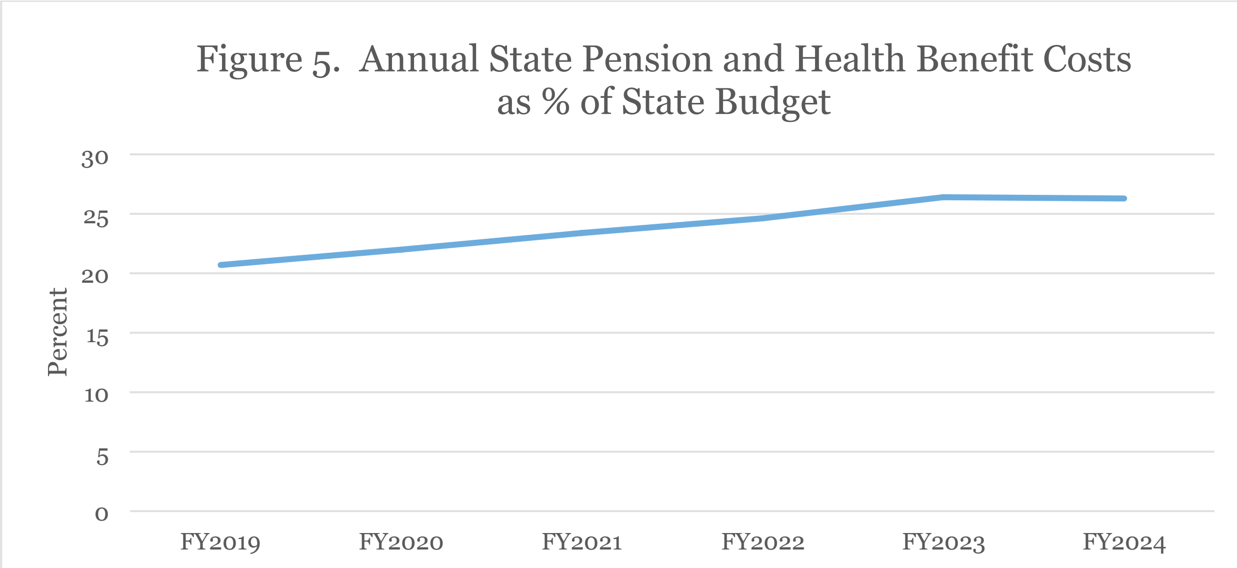
[13] NJ Debt Report, 15. This does not include $11.7 billion of local retiree healthcare liabilities.
[14] New Jersey Pension and Health Benefit Study Commission, *Supplemental Report on Health Benefits*, State of New Jersey Department of the Treasury, February 11, 2016, ii.
[15] Includes costs for state pensions, retiree healthcare, active healthcare, and pension bond debt service. *Path to Progress*, 32-33.



Source: *Path to Progress*

But locked-in funding requirements mean that New Jersey's budgets are tight and in persistent structural deficit, so increased funding for pensions and benefits portends an untenable situation. The Study Commission determined that 87 percent of state revenues are committed to federal mandates, bonded obligations, and other required funding demands. The remaining 13 percent funds essential services such as law enforcement, public safety, and state government.[16] This is why the *Path to Progress* report called New Jersey's legacy costs "unsustainable."[17] Without reform, meeting these projected costs would require either massive tax increases or drastic cuts in services, or most likely both.

As the Mercatus Center warned: "it is hard to imagine a scenario under which current pension and healthcare promises could be honored."[18]

<u>How Did New Jersey Get into This Position?</u>

Unsurprisingly, the NJEA blames it all on the state: "The state's failure to fund its share of pension costs is the only reason for [the] pension crisis faced by the state."[19] This self-serving answer conveniently ignores the NJEA's own role in this looming disaster.

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[16] New Jersey Pension and Health Benefit Study Commission, *Roadmap to Resolution: Report of the New Jersey Pension and Health Benefit Study Commission*, State of New Jersey Department of the Treasury, February 24, 2015, 8.
[17] *Path to Progress*, 1.
[18] Scott Andrew Shepard, "The New Jersey Pension Crisis: Flailing in Deep Waters," (Mercatus Center at George Mason University, Arlington, VA, 2018).
[19] New Jersey Education Association, "NJEA Statement on Lottery Proposal," May 12, 2017, https://www.njea.org/njea-statement-lottery-proposal/.

The NJEA's role—along with that of its public employee union allies—was summarized well by University of Georgia Professor Jeffrey Dorfman, who described how Illinois became the state with the lowest bond rating:

> The basic process by which states get in such severe financial trouble is well established. Unions get protection from any future diminishing of pension obligations enshrined into state law or, ideally, the state constitution. Then public sector unions give state politicians big campaign contributions in exchange for large, irresponsible future pension benefits. The state legislature then underfunds those pensions, keeping the taxpayers from realizing the full cost of the promised pensions and eliminating any near term pain from the pension promises. Unions don't object to the underfunding because they know the law protects their pensions no matter how bad the situation gets.[20]

This describes precisely what occurred in New Jersey.

Public pension and health benefits are political creations. All their features are determined by political decisions. The NJEA recognizes this. During a 2015–16 push for a constitutional amendment guaranteeing pension funding, NJEA President Wendell Steinhauer told his members: "Election organizing is pension organizing."[21] In 1998, NJEA President Michael Johnson was more explicit: "Most of the 'benefits' our members enjoy are directly linked to and provided because of politics."[22] The NJEA knows that if it wants to affect benefits, it has to exert political power.

As shown in SPCNJ's "Money Equals Power: How the NJEA Dominates New Jersey Politics," no political power in the state comes close to the NJEA. The NJEA dominates the political playing field from Trenton all the way down to the smallest school district.

The NJEA Structured the System It Wanted

True to President Powell's words, for decades the NJEA has used its enormous and unmatched political clout to construct the pension and retiree health system that exists today. Until recently, it helped elect and keep in office politicians who made overly generous promises but did not fund them. It participated in pension raids and bond schemes that worsened the condition of the pension system. It insisted on and protected exceedingly generous employee and retiree health benefits. It forcefully and consistently fought reforms that might have altered New Jersey's path to penury. And to top it all off, it tried to lock this disastrous system into the state constitution—just as Dorfman described.

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[20] Jeffrey Dorfman, "Illinois Credit Downgrade Proves Public Pensions Should be Outlawed," *Forbes*, June 5, 2017.
[21] Wendell Steinhauer, "President's Message," *NJEA Review* 88, no. 4 (December 2015): 7.
[22] Michael Johnson, "President's Message," *NJEA Review* 72, no. 6 (February 1998): 6.

Pensions Are Obligations of the State So Both Salaries and Pensions Were Maximized. New Jersey's pension system was deliberately structured to maximize what is owed to retirees. First, due to persistent and powerful political influence from the NJEA in collaboration with allies, teacher pensions are the obligation of the state, while the teacher salaries on which those pensions are based are the obligation of local school districts. As the Study Commission found, this disconnect meant that local teachers unions could "collectively bargain for salaries with local school districts freed from the need to consider the impact of the resulting salaries on pension costs."[23]

By design, local taxpayers, whose property taxes fund local education budgets, did not have to foot the full cost of employing teachers in local schools, removing an important check on excessive compensation. The actual and intended result: Teachers could maximize both salaries and pensions. The Study Commission concluded that this disconnected structure is "a major source of the State's budget crisis."[24] As will be discussed later, thanks to the tireless efforts of the NJEA, retiree healthcare is also an obligation of the state and not local school districts.

In their study of New Jersey, Eileen Norcross and Frédéric Sautet of the Mercatus Center noted how this separation of responsibility reduced accountability for spending at the local school district level: "By fracturing the relationship between those who benefit (e.g. local school districts) and those who pay (e.g. state income taxpayers), the incentive to control costs, and accountability for spending has been systematically weakened through fiscal illusion."[25]

The NJEA directs local associations to use "step and lane" salary guides,[26] whereby employees get automatic raises from year to year ("steps") with multiple columns providing higher pay for graduate degrees such as masters and doctorates ("lanes"). Combined with NJEA-backed laws that privilege teacher seniority, these factors inevitably result in higher compensation costs as teachers move along in their careers. The NJEA has consistently pushed to increase the salary levels in these guides.[27]

With regard to local budgets and taxes, these salary guides take the decision to give raises out of the hands of local school boards. The NJEA states this clearly: "If there is not a salary guide, employees would only receive a negotiated raise. There would be no

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[23] New Jersey Pension and Health Benefit Study Commission, *Roadmap to Resolution,* 22.
[24] Ibid.
[25] Eileen Norcross and Frederic Sautet, "Institutions Matter: Can New Jersey Reverse Course?" (working paper, Mercatus Center at George Mason University, Arlington, VA, July 2009), 65.
[26] These career salary guides resulted from NJEA lobbying. In 1954, the NJEA "secured passage of the first complete State minimum salary schedule." New Jersey Education Association, "Public Schools – Cornerstone of Liberty," *NJEA Review* 49, no. 6 (February 1976): 17.
[27] New Jersey Education Association, *NJEA Collective Bargaining Manual*, 49, http://www.eiaonline.com/NJEA-Collective-Bargaining-Manual.prf.

built-in annual increases . . . and no way to progress to the highest salary."[28]

To exploit the salary guide structure during contract negotiations, the NJEA provides professional UniServ negotiators and "best practices" to maximize salaries as quickly as possible. The NJEA sums up its philosophy well: "The quicker a member reaches maximum, the more years he or she will be paid at maximum, increasing career earnings as well as pension earnings."[29] In addition to structuring salary guides to maximize teacher pay, local associations, again aided by negotiating professionals from UniServ and explicit NJEA guidance, use higher-paying salary guides from nearby or comparable districts to push local school boards to match or exceed them.[30]

Pensions Systematically Underfunded. On the pension side, thanks to NJEA lobbying, pensions are by law based on the highest salary levels—usually the three years at the end of a teacher's career. This practice differs from Social Security, in which career average salary is used as the basis for pensions. So in New Jersey's system, the teacher's contributions over the course of a career will not be sufficient because they are based on all the years of employment—including the earlier years when the teacher was earning less—whereas the pensions are based on only the highest salary years at the end of a career. As the 2006 report of the special session of the legislature (the "Special Session") found: "The insufficient contributions result in an underfunding of the pension system."[31] In other words, the pensions were systematically underfunded.

This conclusion is backed by research. Georgetown University's Edunomics Lab researched New Jersey's pension system and found that it is indeed a pension-maximizing system: Each dollar awarded in final average salary results in a $9.66 increase in the state's pension obligations.[32] As shown above, teacher salary raises are fixed in "step and lane" salary guides that are usually given as a percentage of salary. Because these salaries inexorably climb, by the end of a career, a teacher has reached the highest salary years, which then determine the pension payout. Thus, the cumulative value of the pension payout is highly sensitive to even modest changes in late-career salaries: "Give a raise in the final years of teaching, and the teacher gets a raise for life."[33]

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[28] Ibid, 46.
[29] Ibid., 48-49. The NJEA's parent organization, the National Education Association, uses these tactics as well. See Dave Winans, "Field-Tested Salary Campaign Tactics," August 2007, www.nea.org/home/16253.htm.
[30] New Jersey Education Association, *NJEA Collective Bargaining Manual*, 45.
[31] Special Session Joint Legislative Committee, *Public Employee Benefits Reform Final Report*, December 1, 2006, 86.
[32] Marguerite Roza and Jessica Janovski, "How Late-Career Raises Drive Teacher-Pension Debt," Edunomics Lab, Georgetown University, December 2015, 5.
[33] Michael Podgursky and Marguerite Roza, "Teachers' Pensions and the Overgrazed Commons," *Governing*, March 26, 2015.

Moreover, because in New Jersey school districts are responsible for salaries and the state is responsible for pensions, school districts do not bear the pension consequences of salary increases and thus are more generous with raises. Again, the structure of New Jersey's pension system virtually guarantees underfunding.

But this does not capture the full role the NJEA played.

NJEA: A Willing Participant in Pension Asset Raids. As the Study Commission pointed out, defined benefit pension plans are inherently volatile: The liabilities climb every year, while assets go up and down with the markets and contribution rates. In flush years, pension surpluses may be temporary, so these surplus assets must be retained against the bad years. This was not done in New Jersey.

On the contrary, as will be shown later, the NJEA was mostly a willing participant in numerous schemes to create surplus pension assets that were then substituted for regular pension contributions and used to enhance benefits. This meant that no new money was coming into the pension system, leaving it vulnerable to the market downturns that inevitably occurred. Increased benefits, less-than-expected returns, and insufficient funding are the main culprits for New Jersey's enormous unfunded pension liabilities.

In sum, the pension system was deliberately structured in a way that allowed it to be gamed and permitted maximizing both salaries and pensions while minimizing contributions. No wonder, then, that NJEA President Michael Johnson said in 1998: "Our excellent pension system . . . [is] the result of hard-fought legislation and politics."[34]

"Cadillac" Active Employee Health Benefits. Like teacher salaries, employee health benefits are negotiated on a multiyear basis and provide inexorable upward pressure on local school district budgets. All active education employees are provided exceptionally generous and exceedingly costly health coverage. The Study Commission found that these employees get coverage "at platinum-plus levels rarely found in the private sector."[35] New Jersey's public-sector health plans cover an average of 97 percent of the total cost (meaning out-of-pocket costs for the employee are a mere 3 percent) – *the highest percentage of any government healthcare system in the nation*.[36] This compares with an average of 90 percent for Affordable Care Act Platinum Plans and 80 percent for Gold Plans.

Yet these employees must pay only a relatively small portion of the plans' actual costs.

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[34] Michael Johnson, "President's Message," *NJEA Review* 72, no. 6 (February 1998): 6.
[35] New Jersey Pension and Health Benefit Study Commission, *Supplemental Report on Health Benefits*, 10.
[36] *Path to Progress*, 15.

The *Path to Progress* report found that active employees have to pay a relatively low 21 percent of their premiums[37] compared with the nationwide private-sector average of 25 percent.[38] Looking at overall dollar costs, the Study Commission found that the total cost for family health benefits coverage averaged $30,322, of which the employee paid $6,365 in premiums and out-of-pocket expenses, with New Jersey taxpayers picking up the remaining $23,957.[39]

By way of comparison, the Study Commission found New Jersey's health plans cost 50–60 percent more than the national averages for both public and private plans[40] and concluded that a large part of the state health programs' high and increasing cost is "due to the extensive benefits and relatively low cost to employees."[41] O*nly two states had higher average state employee health care costs than New Jersey*.[42]

As with salaries, New Jersey's "Cadillac of health plans"[43] is the product of a concerted NJEA effort. The NJEA provides specific guidance to local associations that when negotiating for health benefits, local associations are to push for maximum coverage at minimum cost to employees, regardless of the cost to school boards or taxpayers.[44] Likewise, the NJEA pushes local associations to use nearby or comparable districts' health plans to increase benefits.[45]

Incredibly, prior to 2011,[46], 87 percent of members got "Cadillac" healthcare for free.[47] As NJEA Executive Director Richard Bonazzi said in 2004: "Full-paid health benefits are the standard for public school employees in New Jersey. . . .So of course we're angry

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37 New Jersey Pension and Health Benefit Study Commission, *Supplemental Report on Health Benefits*, 10.
38 New Jersey Pension and Health Benefit Study Commission, *Supplemental Report on Health Benefits*, 10.
39 New Jersey Pension and Health Benefit Study Commission, *Supplemental Report on Health Benefits*, 6.
40 New Jersey Pension and Health Benefit Study Commission, *Truth & Consequence: Status Report of the New Jersey Pension and Health Benefits Study Commission*, State of New Jersey Department of Treasury, September 25, 2014, 8.
41 Ibid., 24.
42 Ibid.
43 This phrase was used by Fred Beaver, director of New Jersey's Division of Pensions and Benefits, to a legislative committee in 2006. Adam Cataldo, "The 'Cadillac of Health Plans' Is a Heavy Load to Deal With," *Bond Buyer*, March 30, 2006.
44 New Jersey Education Association, *NJEA Collective Bargaining Manual*, 76.
45 Ibid.
46 In 2011, Public Law 2011, Chapter 78 required that employees pay a portion of their health insurance premiums, ranging from 3 percent to 35 percent, depending on the employee's salary.
47 Before Chapter 78, the New Jersey School Boards Association determined that only 13 percent of school districts required any contribution. Diane D'Amico, "Law's Expiration May Renew Battle Over Benefits," *Press of Atlantic City*," January 31, 2016.

when a board of education wants you to pay for your health benefits package."[48]

State Retiree Health Benefits for Free. Thanks to 1987 and 1992 laws that the NJEA lobbied long and hard for, the state provides retirement health benefits to all education employees. The Study Commission noted that the roots of the current benefits crisis could be traced to 1987, when free retiree health benefits were first provided to teachers based on what was then perceived to be a surplus in the TPAF.[49]

Before the 2010 reform laws, no education retirees made premium contributions to their retirement health care. Existing retirees and active employees with more than 25 years of service in 2010 were grandfathered and thus currently make no premium contribution to their retirement health coverage. The Study Commission determined that 103,000 retired educators were in this category.[50]

Retirees fall into two categories: early retirees who retire before age 65 and Medicare-eligible retirees who retire at age 65 and older. The Study Commission called early retirees "the perfect storm" for health benefits funding.[51] There were 20,000 retired educators in this category,[52] which the Study Commission noted showed how early retirement had expanded beyond its origins in the unique career demands of police and firefighters.[53] These retirees are the costliest segment on a per capita basis, comprising 11 percent of subscribers but 21 percent of the cost and averaging $29,748 per year. Such retirees get the same Platinum-plus health coverage as active employees until they reach 65 but are more expensive to insure due to their age and health status. Grandfathered in by the 2010 law, they make no premium contribution, whereas, nationally, the average early retiree pays 40 percent of the cost of coverage.[54]

The Study Commission determined that there were 83,000 Medicare-eligible education retirees at an average cost of $9,970 because most of their expenses were covered by Medicare.[55] The state offered a supplemental plan that covers virtually all other medical costs not covered by Medicare—amounting to about 20 percent of total retiree health costs—at no premium cost to them. By way of comparison, only 25 percent of large employers offered such supplemental care. Of those that did, only 8 percent were fully funded by the employer (like New Jersey), and 48 percent required that the retiree

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[48] New Jersey Education Association, "Holding the Line Against Premium-Sharing," *NJEA Reporter* 48, no. 1, (September 2004): 16.
[49] New Jersey Pension and Health Benefit Study Commission, *Roadmap to Resolution,* 40.
[50] New Jersey Pension and Health Benefit Study Commission, *Supplemental Report on Health Benefits*, 32.
[51] New Jersey Pension and Health Benefit Study Commission, *Roadmap to Resolution,* 16.
[52] New Jersey Pension and Health Benefit Study Commission, *Supplemental Report on Health Benefits,* 9.
[53] Ibid., 13.
[54] New Jersey Pension and Health Benefit Study Commission, *Roadmap to Resolution,* 17.
[55] New Jersey Pension and Health Benefit Study Commission, *Supplemental Report on Health Benefits*, 13.

pay the entire premium. Across all employers, 91 percent required premium contributions from Medicare-eligible retirees.[53] At the time of the study, New Jersey was clearly an outlier in the generous supplemental health benefits it provided to retirees, and these programs remain in place today.

The *Path to Progress* report looked at the cost of retiree healthcare another way, highlighting the discrepancy in costs versus active employees. Current employees pay an average of 21 percent of the cost of coverage – about nine times as much as the 2.5 percent paid by retirees.[56] *New Jersey is the only one of the 45 states that provide retiree healthcare where retirees do not pay the same or more than current employees*.[57]

Either way, the great majority of retired educators receive exceptionally generous health coverage for free. These benefits are well in excess of what is available in the private sector, where most taxpayers work. Over the decades, the NJEA worked continuously—and largely successfully—to expand health benefits and fight any efforts to reduce them. Modest reform came about only in 2010 and 2011 after the election of Gov. Chris Christie, and the NJEA has been working tirelessly ever since to reverse those reforms.

So New Jersey's dire fiscal condition is not a matter of happenstance. It was caused by deliberate policies and actions that were at root part of a political process. As the most powerful political actor in the state, the NJEA took the lead in bringing about these policies and actions.

The NJEA's Political Clout at Work: A Brief History

New Jersey provided its first pension for teachers in 1896. Presaging the current crisis, that pension plan collapsed due to inadequate funding, which led to the TPAF's creation in 1919. *The NJEA is well aware of this historical fact and would be expected to have learned from it that adequate funding is crucial to a pension plan's viability. This should be remembered when assessing the NJEA's later posture toward pension underfunding*.

The 1919 version of the TPAF serves as a benchmark for a more prudent commitment of taxpayer dollars. Teachers were expected to contribute 50 percent of their expected retirement benefit with the state supplying the other half. The 1919 law's pension formula used a more conservative years-of-service multiplier[58] and based a teacher's

[56] *Path to Progress*, 15.
[57] Ibid., 16.
[58] To derive what proportion of a teacher's earnings will constitute a retired teachers annual pension benefit, the number of years of service is divided by a fixed denominator. Under the 1919 law, the denominator was set at 70, so the formula was n/70, with *n* being the number of service years. Then n/70

pensionable salary on the last five years of earnings. From 1919 on, the NJEA worked ceaselessly to loosen the original formulation and enhance pension benefits.

In 1955, the legislature passed a law "at the request of NJEA"[59] that increased the multiplier by 17 per- cent[60] —a "big improvement" in teacher pensions, according to the NJEA president at the time.[61] The teacher's retirement age and contribution rates were reduced, and provisions for early retirement were established. In 1971, the calculation of pensionable earnings was changed to be based on the average of a teacher's highest three years of earnings, which Gov. William Cahill claimed would increase retirement benefits by 10 to 20 percent.[62] The provisions for early retirement were also loosened so that the benefits reduction for early retirement was reduced by 50 percent.

While the NJEA openly and successfully pushed for the state's first income tax in 1976, it also managed to block changes to a key pillar of New Jersey's pension structure. The new tax revenues helped relieve the budgetary pressure caused by the New Jersey Supreme Court's school funding decision and helped block an attempt to shift pension funding to local school districts. The NJEA proclaimed that it had "once again fought off a dangerous . . . proposal that the employer's share be paid by each local district . . . and payments will come once again from the State Treasury."[63]

The NJEA has largely been successful at blocking or weakening pension reform efforts. In 1984, Gov. Tom Kean created the Pension Study Commission to control rising pension costs. Among other reforms, this commission recommended increasing the retirement age and putting new employees into a less expensive system. NJEA President Edithe Fulton called the recommendations "the most outrageous assault ever attempted on the state pension system" and vowed to "protect our benefits with every resource we have."[64] The NJEA went so far as to call for a boycott of businesses of people who served on the commission.[65] The recommendations were never implemented.

The NJEA scored a huge political success in 1987 when it gained fully paid health benefits for retired teachers, which was "achieved through years of NJEA lobbying."[66]

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is multiplied against a teacher's pensionable salary, which under the 1919 law was based on the average of the teacher's five highest-paid years.

[59] New Jersey Education Association, "Better Retirement for New Jersey's Teachers," *NJEA Review* 29, no. 1(September 1955): 25.

[60] The law increased the multiplier by reducing the denominator from n/70 to n/60.

[61] New Jersey Education Association, "Busy, Right Away," *NJEA Review* 29, no. 1 (September 1955): 8.

[62] Office of the Governor William T. Cahill, "From the Office of the Governor," press release, April 5, 1971.

[63] New Jersey Education Association, "Education Disaster Averted," *NJEA Review*50, no. 1 (September 1976): 16.

[64] Joseph F. Sullivan, "Teachers Gird to Fight Change in Pension Plan," *New York Times*, February 19, 1984.

[65] Associated Press, "Teachers' Union Calls a Boycott," *New York Times,* April 23, 1984.

[66] New Jersey Education Association, "Understanding the Value of Your Health Benefits," *NJEA Reporter* 49, no. 2 (October 2005): 3.

Once again, the NJEA helped shift what had been a local school district responsibility to the state, relieving pressure on local school budgets and therefore teacher salaries. This long-sought goal was the NJEA's "greatest legislative achievement of 1987."[67] Retiree health benefits and cost-of- living adjustments (COLAs) become a liability of the TPAF and were both pre-funded on a reserve basis. Foreshadowing another future legislative success, the NJEA promised to "vigorously pursue" the same health benefits for retired support staff, which became a perennial NJEA lobbying priority until it succeeded in 1992.

Meanwhile, the NJEA continued to push for further pension enhancements, stating that it "has initiated legislation to provide significant improvement in pension benefits."[68] These benefits included increasing the pensionable earnings multiplier another 20 percent,[69] calculating pensionable earnings based on the single-highest salary year rather than the average of the top three years, and removing the 10-year service requirement to allow for automatic vesting.[70] These enhancements were consistently part of the NJEA's lobbying agenda until the major pension increase in 2001.

Once again thwarting reform attempts, the NJEA and its public-sector allies "worked hard" to defeat the creation of a Pension and Health Benefits Review Commission that would look at pension and health benefit legislation and evaluate its financial impact on the state before the legislature could act on it. The NJEA realized that such a commission would provide information to legislators that would have "made passage of pension and health benefit legislation more difficult" and had a "negative effect on our efforts to make improvements in the area of pension and health benefits legislation."[71]

The NJEA Flips the Legislature. In one of the more remarkable feats of political power in modern New Jersey history, the NJEA showed its enormous political clout when newly elected Gov. James Florio revived the idea of shifting responsibility for teacher pensions to school districts. After a New Jersey Supreme Court ruling mandated increased state aid to poor districts, Florio sought to raise taxes and devise a new school funding formula while relieving the state of the teacher pension burden as part of the 1990 Quality Education Act. NJEA President Betty Kraemer highlighted why the NJEA feared such a shift: "In a few scant years, increasing pension costs will eat into the dollars available for programs in schools. Local property taxes will have to rise to support programs."[72]

When Florio and other Democrats enacted the pension shift and subsequently moved

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[67] New Jersey Education Association, "Insurance," *NJEA Review* 61, no. 6 (February 1988): 32.
[68] New Jersey Education Association, "Pensions," *NJEA Review* 61, no. 6 (February 1988): 30.
[69] By moving from n/60 to n/50.
[70] New Jersey Education Association, "Pensions," *NJEA Review* 61, no. 6 (February 1988): 30.
[71] New Jersey Education Association, "Pensions," *NJEA Review* 62, no. 6 (February 1989): 32.
[72] Robert Hanley, "Trenton Assails Florio Proposal for School Aid," *New York Times,* May 31, 1990.

tax dollars from state education aid to property tax relief, the NJEA endorsed 46 Republicans and three Democrats and put its full muscle behind flipping the legislature in the ensuing 1991 legislative election. The result: The NJEA was credited (and credited itself) with turning a Republican minority into a veto-proof Republican majority. As noted in a national news report, "Most observers said the NJEA played the biggest role in turning Democratic majorities in the Assembly and Senate into veto-proof Republican majorities."[73] The pension shift was postponed and ultimately repealed.

Decades later, former Gov. Florio observed that the 1991 flip of the legislature and his subsequent reelection loss in 1993 "taught future governors two extraordinarily dangerous lessons about New Jersey politics: Don't mess with the teachers, and if you raise taxes you'll get the boot."[74]

Neither Democrats nor Republicans forgot the lessons.

The NJEA Helps to Erode Pension Assets. In 1992, the NJEA-friendly legislature granted the NJEA its "top legislative priority"[75]: the long-sought expansion of fully paid retiree health care to education support personnel, which passed by an overwhelming majority. *To fund this expansion, lawmakers started the lamentable and ultimately destructive practice of using pension asset surpluses to offset required pension contributions*. The law revalued pension assets to market value rather than book value, generating a $5 billion increase in the value of the assets. This windfall was used to fund a reserve for the new health benefits, refund prior employer pension payments, and lower present contributions. The law also raised the investment return assumption to 8.75 percent from 7 percent. This higher rate was used to discount the liabilities, thus further lowering required contribution rates. In total, there was a $1.5 billion reduction in state and local pension contributions over two years.[76]

More of the Same Under a Republican Governor. In 1993, Republican Christine Whitman was elected governor, giving the Republicans full control of state government. To fund the income tax cuts she had campaigned on, Whitman changed the accounting method for determining the amount of required pension contributions. The new method essentially back-end-loaded required contributions into the future, thereby reducing

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[73] Associated Press, "NJ Teachers Group Takes 'No Position' on Gubernatorial Race," August 14, 1993. See also Neil Reisner, "Political Donations Target Status Quo," *Record*, December 31, 1995; Leslie Brody and Patricia Alex, "The NJEA vs. Governor Christie: Two Powerhouses Doing Battle," *Record*, March 1, 2010; and Iver Peterson, "New Jersey Teachers Flex Muscle, but Carefully," *New York Times*, April 19, 1994.
[74] Brigid Harrison, "We Should Have Listened to Florio," *Record*, July 17, 2016.
[75] New Jersey Education Association, *NJEA Review* 60, no. 7 (March 1990): 27.
[76] State of New Jersey Benefits Review Task Force, *The Report of the Benefits Review Task Force to Acting-Governor Richard J. Cody,* December 1, 2005, 10.

present contribution levels.[77]

Whitman also ended the pre-funding of health benefits and COLAs established in the 1987 and 1992 benefit expansions. Henceforth, these benefits would be funded by annual appropriation (known as "pay as you go"). Overall, another $1.5 billion in state and local contributions were reduced over two years.[78] Unable to overcome the tax-cut movement in the legislature, the NJEA sued the Whitman administration for underfunding pensions.

With the constant budgetary pressures created by her tax-cut pledges, Whitman sought to revive the idea of shifting pensions from the state to local school districts. Once again, the NJEA was able to fend off the proposal.

The stock market boom of the late 1990s allowed for serious manipulation and erosion of the state's pension funding. Enticed by the lure of high equity-market returns, in 1997, Whitman proposed to borrow $2.8 billion of pension obligation bonds (POBs) to plug the unfunded liability gap. The theory was that investment returns on the proceeds from the bond sale would exceed the interest paid on the bonds. Unfortunately, New Jersey will ultimately spend more than $10 billion in servicing this expensive debt.[79] The legislature has since enacted a moratorium on POBs.

The NJEA supported this scheme and actively pressured lawmakers to pass the bill. NJEA President Dennis Testa was willing to make a deal because the NJEA would gain for its members the non-forfeitable right to promised pensions (after only five years of service) and the proceeds from the bond sale would reduce pressure to shift pension to local districts.[80] "After three years of intense lobbying,"[81] the NJEA "lobbied for and won"[82] the non-forfeitable right, which passed by an overwhelming majority. In return, the NJEA dropped the underfunding lawsuit against the Whitman administration. The non-forfeitable right meant that future pension reform efforts could target only new employees. Thus the Study Commission found that, even when pension reform laws

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[77] Whitman replaced the entry age normal accounting method, which smoothed out contributions over the course of a teacher's career, with the projected unit credit (PUC) method, which determined contributions based on a what a teacher earned in a given year. Because teacher salaries were highest at the end of their careers, under the PUC method, so were the required pension contributions, which back-end-loaded the state's contributions to the future. Conversely, smaller contributions were required in the present.

[78] State of New Jersey Benefits Review Task Force, *The Report of the Benefits Review Task Force to Acting-Governor Richard J. Cody,* December 1, 2005, 10.

[79] Ultimately, the $2.8 billion in bonds issued will grow into more than $10 billion in debt service when the bonds mature in 2029. New Jersey Economic Development Authority, State Pension Funding Bonds, Series 1997A-1997C, official statement, June 26, 1997.

[80] Ralph Siegel, "NJEA Endorses $2.9bn Bond Sale," *Record*, March 7, 1997.

[81] New Jersey Education Association, "Pension/Health Benefits," *NJEA Review* 71, no. 6 (February 1998): 36.

[82] New Jersey Education Association, "Pension and Benefits Protection Squad Ready for Return to Action," *NJEA Reporter* 49, no. 8 (March 2006): 2.

were finally passed in 2010 and 2011, 89 percent of teachers were protected from any reduction in their pensions.[83] Currently, two-thirds of state and local government employees have pension benefits protected by the non-forfeitable right.[84]

The NJEA Again Abets Pension Erosion. The 1997 law, ironically dubbed the "Pension Security Plan," also changed state law by officially sanctioning the use of surplus assets to reduce the normal contributions (which is what the NJEA sued over in the first place). The Special Session report found that "this change in funding policy resulted in either full or partial reductions in the state's and local government employers' otherwise required normal contributions to the retirement plan for fiscal year 1997 through fiscal year 2003."[85] The change also reduced employee contributions from 5 percent to 4.5 percent of salary. Overall, the NJEA called the POB deal a "success" and "victory."[86]

Notably, the NJEA did not oppose Gov. Whitman's reelection in 1997 but was "neutral" despite Whitman's "years of . . . lower contributions from the state."[87] *The state's underfunding of pensions was supposedly a big issue for the NJEA, yet the NJEA chose not to make it a campaign issue and did not work to defeat Whitman or make an example out of her.*

The NJEA Leads a Pension Raid. The NJEA had been lobbying for years for pension enhancements, and the dot-com boom of the late 1990s gave the NJEA and its allies the nominal surplus assets to pay for them. Police and firefighters got pension enhancements in 1999, and the NJEA was "moving quietly behind the scenes to improve retirement benefits for teachers and to muster the legislative support to make them a reality." Republican President of the Senate Donald DiFrancesco made his plans clear: "We're talking to the teachers union. . .. The way I look at it, if the pension system is healthy, if we can give them some benefit resulting from a good economy, I say give it to them."[88]

But Gov. Whitman remained an impediment. In 2000, the NJEA-friendly Republican legislature sent a substantial pension enhancement bill to Whitman's desk, which she promptly vetoed. The NJEA soon got a second chance when DiFrancesco became acting governor after Whitman left office to join the George W. Bush administration.

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[83] New Jersey Pension and Health Benefit Study Commission, *Roadmap to Resolution,* 12.
[84] *Path to Progress*, 14.
[85] Special Session Joint Legislative Committee, *Public Employee Benefits Reform Final Report*, 109.
[86] New Jersey Education Association, "1998 NJEA Legislative Program," *NJEA Review* 71, no. 6 (February 1998): 28.
[87] Leslie Brody and Patricia Alex "The NJEA vs. Governor Christie: Two powerhouses doing battle" NorthJersey.com, February 28, 2010.
[88] Tom Hester, "New Jersey Public Employees Seek Improved Benefits," *Knight Ridder Tribune*, August 25, 2000.

Faced with legislative elections in 2001, lawmakers fell over themselves to please the NJEA, granting both existing and prospective retirees a 9 percent pension increase.[89] Further, the law was passed in conjunction with statutory provisions excusing non-funding of both the newly enhanced and preexisting benefits for several years. As a final sop to the NJEA, the law temporarily reduced employee contributions from 4.5 percent to 2.5 percent. In a particularly underhanded move aimed at creating "surplus" assets to fund the enhancement, the legislature reached back to June 30, 1999, to value pension assets when they were $5.3 billion higher than under the then-current valuation method—even though by 2001 the dot-com bust had in reality reduced the value of those pension assets by billions of dollars.

Legislators and the NJEA were fully aware that this bill was depleting pension assets. In evaluating the bill, the Office of Legislative Services stated clearly that the bill "does reduce the available assets in the pension funds" and noted that valuing the assets at 1999 levels "does not reflect losses due to current market conditions."[90] Yet, the bill was passed quickly with little debate and only one dissenting vote. This time, NJEA-friendly Acting-Governor DiFrancesco signed the bill.

To help secure passage of the pension enhancement in 2001, the NJEA engaged in "a major grassroots effort." The NJEA duplicitously argued that the pension funds "contain surplus assets that can and should be used to finance an improved pension formula."[91] *This is a curious argument from an organization that had protested and even filed a lawsuit against the state's underfunding of pensions*. Increasing the liabilities of a system that is being underfunded worsens the situation and adds the necessity of even greater funding in the future, which the NJEA knew would be problematic for the financially stressed state. Doing so by artificially inflating asset values to "pay" for the pension increase is even worse. Yet the NJEA crowed that it was "one of the most significant legislative accomplishments in NJEA history."[92]

This raid on pension assets was so egregious that subsequent legislatures enacted a moratorium on pension enhancements. The Study Commission underscored how this raid hurt the condition of the pension plans: "*The burden of this instant retroactive increase in the state's pension obligations, combined with an extended pension-funding holiday, has been a key contributing factor to the current crisis* [emphasis added]."[93]

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[89] This was done by increasing the salary multiplier from n/60 to n/55.
[90] State of New Jersey, Senate Budget and Appropriations Committee, Statement to S2450, Fiscal Analysis, June 25, 2001, 5.
[91] New Jersey Education Association, "Pension/Health Benefits," *NJEA Review* 74, no. 6 (February 2001): 40.
[92] New Jersey Education Association, "A Deal is a Deal – No Matter When It Was Made," *NJEA Reporter* 49, no. 3, (November 2005): 3.
[93] New Jersey Pension and Health Benefit Study Commission, *Supplemental Report on Health Benefits*, 27.

The 2005 Benefits Review Task Force appointed by Acting Governor Richard Codey (the "Codey Task Force") similarly called the raid a "*poster child for why the current system is a failure … The process by which it was undertaken and the manner in which it was justified and implemented was indefensible* [emphasis added]."[94] Yet the NJEA was 100 percent behind it.

Returning the favor, the NJEA endorsed DiFrancesco in the Republican primary—the first time the NJEA had endorsed a candidate in a gubernatorial primary.[95]

Under the Democrats, More of the Same. The pension-funding legerdemain continued under new Democratic Gov. Jim McGreevey, elected in 2001, who confronted a budget squeeze in 2002. When Gov. Whitman stopped pre-funding retiree health benefits in 1994, the legislation required the state to put 0.5 percent of employee salaries into a health care reserve fund. Under a new 2002 law, the state used the $327 million built up in this reserve fund to reduce the state's normal pension contribution.

In 2003, faced with another budget squeeze at all levels of government, McGreevey proposed to phase in employer pension payments over five years. The law allowed local employers to phase in their total contributions in increments of 20 percent to reach full funding for the TPAF by 2008. Echoing 2002, the state reduced its own contributions by using the Benefit Enhancement Fund (effectively surplus assets) from the 2001 law, which was supposed to be used to pre-fund its pension enhancements. For three years up to 2007, the legislature took money out of the Benefit Enhancement Fund to make the state's pension contribution. This, too, was a pension raid, as assets were depleted and no new money was injected into the pension system.[96]

Once again, the NJEA chose not to punish lawmakers for underfunding pensions. During the 2003 legislative elections, 82 percent of all incumbents received NJEA endorsements, and 93 percent of NJEA-endorsed candidates won.[97]

The non-funding status quo apparently suited the NJEA just fine.

Blocking Reforms. The NJEA not only used its political clout to lobby for enhanced benefits but also wielded that power to block reform efforts. By not allowing reform of

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[94] State of New Jersey Benefits Review Task Force, *The Report of the Benefits Review Task Force to Acting-Governor Richard J. Cody,* December 1, 2005, 20.

[95] Kathleen Cannon, "NJEA Endorses DiFrancesco over Schundler in GOP Primary," *Associated Press*, March 2, 2001.

[96] Mary Williams Walsh, "N.J. Pension Fund Endangered by Diverted Millions," *New York Times,* April 4, 2007.

[97] Percentage of NJEA-endorsed winners from New Jersey Education Association, "Legislation + Political Action = Great Public Schools," *NJEA Review* 77, no. 6 (February 2004): 12. Percentage of incumbents endorsed from New Jersey Department of State, Division of Elections, "2003 Election Information Archive," and New Jersey Education Association, "Election Update: Get to the Polls Nov. 4," *NJEA Reporter* 47, no. 3 (November 2003): 2.

the system when its problems were less severe, the NJEA helped ensure that those problems would become more severe in the future.

Faced with the manifest and perennial problem of state funding for retiree benefits, Acting-Governor Codey created the Codey Task Force to look into public employee pensions and benefits and recommend changes that would control costs. The NJEA geared up to fight any ensuing legislative proposals. It reported that it had "two major task forces comprised of over 75 leaders and staff working on every aspect of this issue, including lobbying, organizing, and advertising."[98]

The Codey Task Force's 2005 report recommended raising the retirement age, reverting back to using the highest five years for pensionable salaries, and requiring that all active and retired employees contribute to their health care, among other changes.[99] Based on this report, legislation was introduced to enact several of the recommendations. The NJEA mobilized to defeat the bill, and Vice President Barbara Keshishian celebrated the victory: "Thanks to the swift action of NJEA members . . . a bill that would have sharply reduced pensions and benefits was withdrawn."[100]

In 2006, newly elected Democratic Gov. Jon Corzine confronted the perennial problem of New Jersey's highest-in-the-nation property taxes and ordered the legislature into a Special Session to reign in the costs driving up property taxes by reducing public employee benefits. The legislature created four committees, which came up with 41 recommendations.[101]

The NJEA political operation kicked into high gear: "The entire organization organized around the special session."[102] President Joyce Powell pledged "the full resources of the organization . . . working non-stop" to oppose any adverse proposals.[103] As part of its campaign, the NJEA intensively lobbied the legislature, monitored all the committee hearings and testified before many of them, sent 24,000 emails, and "conducted the biggest employee rally in more than a decade."[104]

Testifying during the Special Session, NJEA President Joyce Powell made clear the NJEA's position: "Ms. Powell stated the NJEA's position that pension and medical

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[98] New Jersey Education Association, "Acting Governor's Benefits Review Task Force Releases Report," *NJEA Reporter* 49, no. 6 (January 2006): 1.
[99] State of New Jersey Benefits Review Task Force, *The Report of the Benefits Review Task Force to Acting-Governor Richard J. Cody,* December 1, 2005, 5-7.
[100] New Jersey Education Association, "... And We Are Taking Action," *NJEA Reporter* 49, no. 11 (June 2006): 1.
[101] Special Session Joint Legislative Committee, "*Public Employee Benefits Reform Final Report,"* December 1, 2006.
[102] New Jersey Education Association, "A Look Back at 2006," *NJEA Review* 80, no. 7 (March 2007).
[103] New Jersey Education Association, "Special Session Targets NJEA Members" *NJEA Review* 80, no. 5 (December 2006): 1.
[104] New Jersey Education Association, "A Look Back at 2006," *NJEA Review* 80, no. 7 (March 2007).

benefits should not be tiered or reduced." ("Tiered" benefits separate out part-time employees.) Further, Powell stated that any pension cuts would be met with "severe opposition from NJEA members across the state."[105]

Corzine got the message. He backed off and got the Democratic legislature to follow suit. Clearly pleased with its success, the NJEA took credit for being "able to hold off harmful pensions and benefits bills that emerged from the special session"[106] —including an attempt to reverse the irresponsible 2001 pension increase. The laws coming out of the Special Session ultimately produced only minor changes to the pension system, which suited the NJEA but has been a disaster for New Jersey.

As for health care, the NJEA was able to shape the bills resulting from the Special Session to its liking. As openly stated in the official statement made by the bill's legislative sponsor, "reflecting discussions with the New Jersey Education Association,"[107] the legislation guaranteed premium-free retirement health benefits and created a new educator-only School Employees Health Benefit Plan in which the NJEA had "greater representation and more control over what happens to members' benefits than under the old SHBP [State Health Benefits Plan]."[108]

A **Disastrous Decade for Pensions.** *In the decade leading up to the Special Session, the combination of underfunding and increased benefits severely damaged the pension system – all with the support or acquiescence of the NJEA.* In total, benefit enhancements enacted from 1999 to 2007 cost state and local government employers more than $6.8 billion,[109] while from 1997 to 2006, state and local employers avoided more than $8 billion in required contributions. Both the beneficiaries and the sitting politicians benefited but not New Jersey taxpayers, who will ultimately be responsible for the pension liabilities. As the sponsor's statement to one of the Special Session laws noted, "Far too often, the taxpayers' interests are absent from this debate."[110]

The year 2008 brought another attempt to reform retiree benefits. Two powerful Democratic senators, Senate Majority Leader Steve Sweeney and Budget Chair Barbara Buono, proposed bills based on the Special Session's recommendations to rein in retiree benefit costs. The NJEA once again kicked into high campaign gear.

NJEA President Powell made the message clear: "Legislators need to know that when it

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[105] New Jersey Education Association, "Special Session Targets NJEA Members" *NJEA Review* 80, no. 5 (December 2006): 1.
[106] New Jersey Education Association, "A Look Back at 2006: Pension & Health Benefits," *NJEA Review* 80, no. 7 (March 2007).
[107] Sponsor's Statement to A5005, New Jersey State Law Library, June 14, 2007, 76.
[108] New Jersey Education Association, "A Look Back at 2006: Pension & Health Benefits," *NJEA Review* 80, no. 7 (March 2007).
[109] Sponsor's Statement to Senate Bill No. 17, New Jersey State Law Library, January 22, 2007, 66.
[110] Ibid.

comes to pensions and benefits, we don't play games—other than hardball."[111] Its brand of hardball included 80,000 emails, thousands of postcards, lobby days, radio and newspaper ads, and a five-day TV ad campaign.[112] The NJEA also mobilized 12,000 members for demonstrations at the district offices of 30 senators and a large demonstration in Trenton vowing to "Remember in November."[113]

The NJEA got its desired result: "For two weeks, no legislator could escape hearing about NJEA's opposition to pension reduction."[114] The NJEA killed three Sweeney/Buono bills and watered down others. Powell proclaimed, "This outcome represents a clear victory over Sens. Sweeney and Buono."[115]

In total, including twice in the 1980s, the NJEA helped thwart FIVE major attempts to address New Jersey's burgeoning retiree liabilities by reforming the system. All the while, the unreformed pension and health care plans continued to accrue liabilities in the same reckless, underfunded manner, guaranteeing that New Jersey's fiscal condition would continue to deteriorate.

It took the election of Republican Chris Christie to the governor's office to bring about much-needed reforms.

Modest but Real Reforms Under Christie. The Great Recession and the election of Republican Chris Christie—a rare New Jersey politician of either party willing to stand up to the NJEA—in 2009 finally brought about some needed, albeit modest, reforms. But because of the non-forfeitable right to promised pensions granted by the 1997 law, any pension reforms could apply only to newly hired educators, leaving 89 percent of teachers unaffected. The NJEA's reaction to the hard times caused by the recession was particularly revealing. President Powell made clear what the NJEA's priority would be: "While we are concerned about the impact of the current economic crisis . . . the security of our members' pensions remains paramount."[114]

In 2010, Christie teamed up with Democratic Senate President Steve Sweeney to enact a number of the proposals from the 2006 Special Session that had been successfully blocked. Applying only to new hires, these reforms required that employees work full time to earn pension benefits, reversed out the 2001 pension increase, repealed the non-forfeitable right to pensions, and set a maximum pensionable salary. On the health care side, the bill mandated that all employees had to pay 1.5 percent of their salaries for their "Cadillac" health plans. In return, the state committed to reaching full pension

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[111] New Jersey Education Association, "Two Weeks in June: An Organizing Triumph," *NJEA Review* 81, no. 11 (July 2008): 5.
[112] Ibid., 2.
[113] Ibid., 6.
[114] Ibid., 2.
[115] Ibid., 8.

funding incrementally over seven years.

Subsequent 2011 reform legislation raised employee pension contributions to 6.5 percent from 5.5 percent, plus another 1 percent phased in over seven years and rescinded COLAs until they are reactivated. For new employees, the law tightened early retirement provisions and increased the retirement age to 65. The law also gave employees a contractual right to state pension funding, which the New Jersey Supreme Court later ruled unconstitutional. On health care, all employees were required to pay a percentage of the premium, with the actual rate varying according to salary level.

As in the past, the NJEA vigorously fought these reform efforts, engaging in a record-breaking campaign against them.[116] The NJEA launched a multimillion- dollar media assault, organized massive protests in Trenton and across the state, and lobbied legislators directly.[117] No legislator who voted for the reforms was endorsed in the 2011 legislative elections.[118]

Note that the NJEA took a stand with legislators when the issue was curbing benefits but previously did not take a stand when the issue was pension underfunding. Clearly, the NJEA could have taken a stand on underfunding but apparently chose not to.

The NJEA Finally Takes Action on Pension Underfunding: The Constitutional Amendment Fight with Sen. Sweeney. As mentioned, the 2011 pension reform law granted educators a contractual right to pension funding, but the New Jersey Supreme Court ruled that unconstitutional. Consequently, the NJEA developed an audacious new plan to secure pension funding by amending the state constitution. To do so, the legislature had to approve putting the amendment on a ballot by votes in two consecutive sessions. The NJEA succeeded in getting the 2015 legislature to pass the amendment and pushed for the 2016 legislature to do the same in time to secure a position on the November 2016 election ballot.

Once again, the NJEA kicked into full campaign mode, declaring: "We will devote the resources necessary to succeed."[119] True to its words, early in 2016, the NJEA started polling and holding focus groups to shape messaging, hired experts on voter turnout,

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[116] Geoff Mulvahill, "Christie Stirs Outrage of an Old Enemy, Teachers Union," *Associated Press*, August 3, 2015.

[117] New Jersey Education Association, "NJEA Members Take to the Streets—Again!," *NJEA Reporter* 53, no. 10 (May 2010): 3; New Jersey Education Association, "35,000 Rally to Protest Cuts," *NJEA Reporter* 53, no. 11 (June 2010): 1; and New Jersey Education Association, "Nationwide Challenges Require a United, Organized Response," *NJEA Reporter* 54, no. 9 (April 2011): 1.

[118] New Jersey Education Association, "NJEA Joins in Lawsuit over Pension, Benefit Law," *NJEA Reporter* 55, no. 1 (September 2011): 1.

[119] New Jersey Education Association, "We Will Win on Pension Funding," *NJEA Review* 89, no. 10 (May 2016):

and trained a specialized cadre of political organizers to spearhead the effort.

Thanks to NJEA efforts, the assembly passed the bill. Moving to the senate, the NJEA resorted to its time-tested intimidation tactics to pressure Sen. Sweeney. The NJEA called the state's Democratic Party county chairmen and threatened to not make any campaign contributions to Democrats until the senate voted on the amendment.[120]

NJEA President Steinhauer challenged Sweeney directly: "We need a leader who will keep the promise. We will not accept anything less than the amendment he [Sweeney] promised this year."[121] NJEA Vice President Marie Blistan led a rally with hundreds of NJEA members outside of Sen. Sweeney's home district office. Press accounts noted the political stakes for Sweeney: "Delaying the pension proposal could damage Sweeney politically, since he is likely to run for governor in an anticipated primary next year where union support will be crucial."[122]

When Sweeney stood up to the NJEA and did not allow a vote, the amendment died. The NJEA vowed revenge. President Steinhauer threatened: "We're going to be involved at every level. We're going to take the energy that we were putting into this amendment and turn it right over and channel it into finding better leaders for the next year and a half."[123] NJEA protesters at an anti-Sweeney rally chanted, "Bye, bye, Sweeney."[124]

True to Steinhauer's threats, the NJEA PAC Operating Committee unanimously voted to become involved in the 2017 gubernatorial primaries. Traditionally, the NJEA had rarely been involved in primaries, but the committee's vote was "precipitated by Senate President Steve Sweeney's failure to hold the constitutional amendment pension vote." The NJEA was unequivocal: "If we don't like the decisions that are being made, we have an obligation to change the decision-makers."[125]

Shortly thereafter, the NJEA endorsed gubernatorial candidate Phil Murphy in the Democratic primary, and Sweeney soon indicated he would not run. Its taste for revenge not sated, the NJEA tried to unseat Sweeney from his senate seat and presidency by backing a Republican in 2017 senate election. The NJEA ultimately spent $4.8 million in that effort, helping to make that race likely the most expensive state legislative race in U.S. history.

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[120] John Ensslin, "NJ Teachers Won't Donate to Democrats Until Senate Votes on Pension Ballot Measure," *Record*, August 2, 2016.
[121] Dustin Racioppi, "N.J Pension Ballot Measure Stalled by Transportation Fund Dispute, *Record*, August 1, 2016.
[122] Ibid.
[123] Ryan Hutchins, "With Collapse of Pension Amendment, NJEA Dives into Dem Politics," *Politico*, August 6, 2016.
[124] Ibid.
[125] New Jersey Education Association, "The Work to Change the Decision-Makers Begins Now," *NJEA Review* 90, no. 3 (November 2016): 58.

The Current Situation. Sen. Sweeney recently introduced legislation based on the *Path to Progress* report. With regard to retiree benefits, echoing the Study Commission, the bills seek to bring teacher healthcare plans from Platinum-plus- to Gold-level and use the savings to shore up the woefully underfunded pensions. Thus far, the NJEA's reaction has been true to form: "NJEA remains adamant that there will be no discussion or negotiations of benefit cuts for public school employees."[126] Not only will the NJEA block the *Path to Progress* reforms, it is actively seeking to roll back the healthcare reforms enacted under Governor Christie in 2011, seeking "any reasonable chance to overturn Chapter 78" and reduce the amounts teachers must pay for their Platinum-plus healthcare plans.[127] As always, the NJEA wants high-cost healthcare plans with low payments for its members, which means that once again New Jersey taxpayers will be stuck with the bill.

These fights continue to this day.

The NJEA-Constructed System: Choices Have Consequences

Up until the Great Recession and the advent of Gov. Christie, the NJEA was able to construct the retiree benefit system it wanted and fought every attempt at reform. In addition to placing retiree health care with the state, the NJEA fought hard to keep teacher salaries negotiated at the local level while the resulting pensions remained with the state. School districts—and local property taxpayers—were thus freed from the full consequences of their pension-maximizing salary structures. At the state level, the NJEA worked to enhance and protect pensions and structure them so that they were systematically underfunded.

The result was exceptionally generous retirement benefits. Gov. Christie maintained that the average teacher puts in $195,000 over a 30-year career and gets back $2.6 million in benefits.[128] The 2005 Codey Task Force reached a similar conclusion.[129] This is quite a contrast with the original TPAF in which teachers were expected to fund half their retirement benefits.

The only thing the NJEA did not achieve was full funding. Politicians, keenly focused on

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[126] New Jersey Education Association, "Will lottery fix pensions? Don't bet on it." https://www.njea.org/will-lottery-proposal-fix-pension-problems-don't-bet/

[127] Marie Blistan, "Get ready: It's going to be an action-packed year," *NJEA Review* 91, no. 1 (September 2018): 7.

[128] Michael Catalini and Jill Colvin, "Christie Signs 2016 Budget, but Issues Go Unresolved," *Washington Times*, June 26, 2015.

[129] Total member contributions make up 25 percent of total benefits, and government (taxpayer) contributions make up 75 percent, but the total government (and taxpayer) liability would have been far greater under the GASB 67 and 68 statements that did not exist in 2005. Calculations are based on PERS, which is largely similar to TPAF in construction. This includes pensions, COLAs, and retiree healthcare. State of New Jersey Benefits Review Task Force, *The Report of the Benefits Review Task Force to Acting-Governor Richard J. Cody,* December 1, 2005, 53.

self-preservation and presented with the choice of pleasing the NJEA or keeping state taxes down, did both—they gave the NJEA what it wanted on retiree benefits but did not spend the money to fund them. Sure, the NJEA made some noise at rallies and in the press and filed a few lawsuits, but until 2015, it never directly punished lawmakers for underfunding the way it punished them for trying to shift pensions to local districts, cutting state education aid, or reducing benefits. Instead, during the time that pensions were being shortchanged, both incumbents and NJEA-endorsed candidates were elected at extremely high rates.

In the end, the NJEA wanted a system in which it could negotiate ever-increasing teacher salaries at the local level free from the competing demand of funding the pensions that were based on them. Of course, had teacher pensions been the local school districts' responsibility, increasing pension costs would have crowded out education spending (and teacher salary hikes) or required higher property taxes. That is a situation the NJEA did not want and fought vigorously to prevent.

But this choice had consequences. Local districts must balance their budgets without the fiscal shenanigans available at the state level, so they have been more diligent about funding their pension obligations, such as those to police and firefighters. These pensions are therefore in better condition than teacher pensions.[130] The NJEA is well aware of this fact: "Local PERS is funded at a higher level than TPAF because Local PERS is funded by individual employers, rather than the state."[131] But the NJEA chose for the state to handle teacher pensions, and for many years, state lawmakers gave the NJEA what it wanted without paying for it.

<u>The Inevitable Result: A Fiscal Calamity That Will Damage the Whole State</u>

As a result, the state is headed toward a fiscal train-wreck. As Figures 3 and 4 show, retiree benefit payments are predicted to climb to an unsustainable $11 billion and 26 percent of the budget by FY2024. As the Study Commission concluded—and even the NJEA has acknowledged—the state simply does not have the money to pay for these benefits without either severe cuts in services or massive tax increases—and most likely both.[132] Yet that was the broken system that the NJEA wanted to lock into the state

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[130] For example, the Police and Firemen's Retirement System, which is funded entirely at the local level, is 58 percent funded, whereas the TPAF, which is funded entirely at the state level, is only 26 percent funded. The Office of Public Finance of the State of New Jersey, *State of New Jersey Debt Report Fiscal Year 2018*, 72.

[131] New Jersey Education Association, "What is the status of the pension COLA?" *NJEA Review* 91, no. 5 (December 2017): 17.

[132] The NJEA acknowledged that taxes had to increase to meet pension payments of $4.5 billion in 2018. "That money isn't available in the current budget, and it will take a combination of a growing economy and substantial new revenue [taxes] to accomplish that difficult goal." New Jersey Education Association,

constitution – without any reform and regardless of the consequences to the state and its citizens.

When these bills come due, important programs that our citizens rely on will be negatively impacted and the whole state will suffer. The *Path to Progress* workgroup summed up the situation well:

> New Jersey faces a fiscal crisis of unsustainable legacy pension and benefit costs … if this crisis is not resolved, it will be impossible to meet our commitment to fully fund public schools, expand pre-school, and make New Jersey affordable for families, senior citizens, and businesses.[133]

<u>Conclusion: The NJEA's Role</u>

The incontrovertible facts show that the NJEA—the most powerful political force in the state—had a direct and leading role in creating New Jersey's pension and benefits crisis. They show that the NJEA consistently pushed for enhanced benefits while depleting the assets that supported them. They show that the NJEA was well aware of the importance of funding pensions and yet participated in schemes that persistently underfunded them. They show that the NJEA repeatedly blocked reform efforts that might have shored up the pension system before it was too late. And they show that prior to 2015 the NJEA chose not to hold lawmakers accountable for underfunding pensions. All the while, the condition of the pension worsened.

Now that the burden has become unsustainable, the NJEA wants to deflect the blame onto the state and stick New Jersey citizens with the ruinous bill.

"Facing the New Jersey Pension Crisis," *NJEA Review* 88, no. 9 (April 2015): 20.
[133] *Path to Progress*, 1.