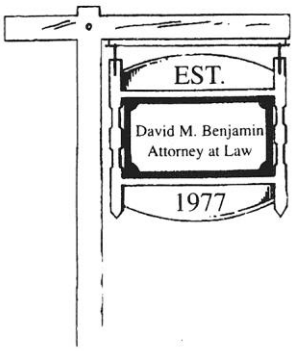

David M. Benjamin
Attorney at Law
P.O. Box 511
Aurora, Ohio 44202
dbenjamin6252@gmail.com
Tel: (216)314-0695
Fax: (330)562-7535

TO CHAIRMAN STEVEN M. ARNDT AND THE OTHER MEMBERS OF THE OHIO HOUSE COMMITTE ON AGING AND LONG TERM CARE

STATEMENT OF DAVID M. BENJAMIN IN OPPOSITION TO HOUSE BILL No. 413

In my first opportunity to appear as a witness before the Ohio Legislature, I express my opposition to House Bill No. 413. After graduating from Case Western Reserve University Law School in 1977, I affiliated with a private law firm that was not a good fit for me, at which point I accepted a position as an Assistant Prosecuting Attorney in the Portage County Prosecutor's Office in Ravenna, Ohio.

I stayed there for nine (9) years despite our staff receiving few salary increases. I stayed because I truly enjoyed the work, but in part because I recognized the opportunity that might someday be available to me to retire under Ohio's P. E. R. S. system. When I left there in 1987, it was to accept another public position as the Assistant Law Director in Tallmadge, Ohio. After two (2) years there, I left Tallmadge to accept a series of opportunities as an attorney representing public communities throughout Northeast Ohio. In each situation, I insisted that a part of my contract be "employee coverage" under the P. E. R. S. system, offering to accept a lesser amounts of compensation to insure that the community/ies I served

had the financial wherewithal to cover all governmental contributions necessitated by deeming me a "public employee."

When I became eligible to retire, I was serving the Village of Mantua, Ohio as its Village Solicitor (its attorney), and chose to end my relationship with them by retiring. Had I determined not to retire and continue working, I would have accrued additional time credits which would have enhanced my retirement benefits. However, I evaluated the opportunity that P. E. R. S. retirement offered, sensed the "winds of change" were coming which might make P. E. R. S. retirement less beneficial in the near future, and considered beginning my retirement and securing its terms.

I learned what my projected benefits would be and weighed the various annuity options available to me. For those of you who don't know, I have been married to Aurora's Mayor Ann Womer Benjamin for almost 40 years, having met her at Case Law School. Ann served for eight years in this House of Representatives, from 1995-2002 as a member of the House Republican Caucus. In fact, were she here, she might well tell you that on election night in 1994, when she was declared a winner in her uphill battle to unseat her predecessor, the notorious former Rep. Paul Jones, she was the 50th Republican who was declared a winner for the State House that evening, meaning that her election to the State House effectively delivered the House Majority into Republican hands for the first time in over 20 years, and allowed former Rep. JoAnn Davidson to ascend into the Speaker's Chair. Ann still talks quite fondly of her time as a part of this body, and it clearly launched her into a very committed and very successful career as a public servant.

I mention my wife specifically for a reason: as I was determining when to retire and how to arrange my annuity, I looked at a couple of thing: first: the statutorily guaranteed annual COLA. With that in place, I felt I could afford to abandon my earnings from the Village of Mantua and initiate my retirement. My math indicated to me that my retirement figure, compounded by a 3% guaranteed annual increase, would sustain my, and in part, our financial needs. That

prospect, along with the facts that she is younger than me (if she were here, she would tell you she is substantially younger than me!) and the fact that her family medical history is more favorable than mine, convinced me to opt for a full, 100% joint annuity, so that if she were to lose me, she would continue to receive what I was receiving. I was not discouraged in those understandings.

Now perhaps I was careless in not reading whatever "fine print" was available to me, but it was only after I began my retirement that I realized that my annual COLA was not to be compounded, but rather figured from my initial benefit payment and maintained at that level throughout my retirement. I also learned that my spouse would not, upon my death, receive benefits at my current level, but rather would only receive my initial benefit entitlement amount.

My point here is that benefit cuts have already been ongoing for many years. My COLA, before any change pursuant to H. B. No. 413, has already shrunk to an effective 2.3% per annum compounded rate. This bill would further reduce my future COLA adjustments along with those of most other public retirees.

As I suspected, a few years after my retirement, the benefits program was overhauled in the name of insuring the fund's financial stability. Benefit level calculations were revised which were less favorable to future recipients, and delays in retirement entitlement dates of some future recipients were instituted. I recognize that these modifications were all done in the interest of financial stability of the fund out of which my retirement benefits are paid. Those modifications were made exclusively with a forward look to them. The differences here that you and the other members of this body are being asked to embrace are not solely forward looking and are hard to understand for several reasons:

First, while Constitutional scholars may disagree, I see the legislation you are being asked to consider as an unconstitutional ex post facto law. By that I mean it will affect a decision I have already made, and the accordance of a benefit already conveyed to me by legislation

which is in place and was in place at the time my decision to retire was made and my retirement benefits were calculated.

Second, in discussions concerning this legislation which I have had with other PERI members, I understand that last year's "Bull" market will make the current financial situation of the PERS fund more favorable than the estimates of the consultants' who urge the passage of H. B. No. 413. Why the rush? Why not wait until last years' figures are published to determine whether the modification before you is justified, a modification which will not only affect my retirement benefits, but perhaps many past and current members of this body. Surely the fund will not collapse in the next several months.

Third, it was only last December when Congress enacted their tax cut bill. I have just received communications from my Congressman, Hon. David Joyce, pointing out that subsequent to that enactment, many major American employers, including Walmart and Starbucks, are providing their employees with wage enhancements. Moreover, we repeatedly hear President Trump point out the marked advancements in the stock markets. Why abandon a legislative promise your predecessors made to retired public servants until we're certain that the consultant forecasts of financial doom really materialize.

With regard to potential modifications to current Ohio Rev. Code Section 145.321, I would pose several thoughts for you to consider. I am certain, that when Section 145.321 was originally considered for adoption, questions were raised as to why 3% was appropriate, or, why it would not be too high. The response, I suggest was along the lines of "in those years when the COLA is less, the annual 3% increase will make up for those years when the actual COLA is higher." Moreover, if the ultimate objective is to line retirees' increases up to the actual annual COLA, why institute a ceiling? Under House Bill No. 413, if an annual COLA is only 1% one year resulting in limiting retirees' COLA increases to that same 1%. However, it would not afford PERS retirees a 5 or 6% benefits'

increase in a year where the COLA rises to that level. It may be hard for some to envision that sort of advance in the cost of living, given the many years of financial growth and stability we have experienced. However, I remember during the Carter years when the best mortgage rate the Mayor and I could obtain to purchase our first house carried a 17% interest rate. I'm sure that the PERS-powers promoting House Bill No. 413 would adamantly oppose eliminating their proposed COLA ceiling, but in equity if the aim is to accord an annual retirees' benefits increase that mirrors the annual cost of living increase, is it fair or appropriate to arbitrarily cut the top off of a COLA increase simply because it saves money?

In instituting a ceiling prohibiting the benefit from ever being higher than the annual COLA, House Bill No. 413 condemns public retirees from keeping better pace with inflation after they have retired. While to some we may be faceless financial figures, I am hopeful that you, the members of the Ohio Legislature who will one day share our status as public retirees recognize the value of our service to the community in public employment positions which were rarely as rewarding as those in private industry. Many of us kept serving the public because of the legislated promise of a secure retirement future. You are being asked to break that legislative promise on consultants' suggestions which I believe are at best unconvincing. Please do not do that to us!

-David M. Benjamin