Public Pension Reform: The Cincinnati Experience

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Stockton, California

Rhode Island

Illinois

Chicago

Kentucky

1/3

Percentage of U.S. citizens whose lives are impacted by public pension crises

Wait …

Cincinnati is on the forefront of something?


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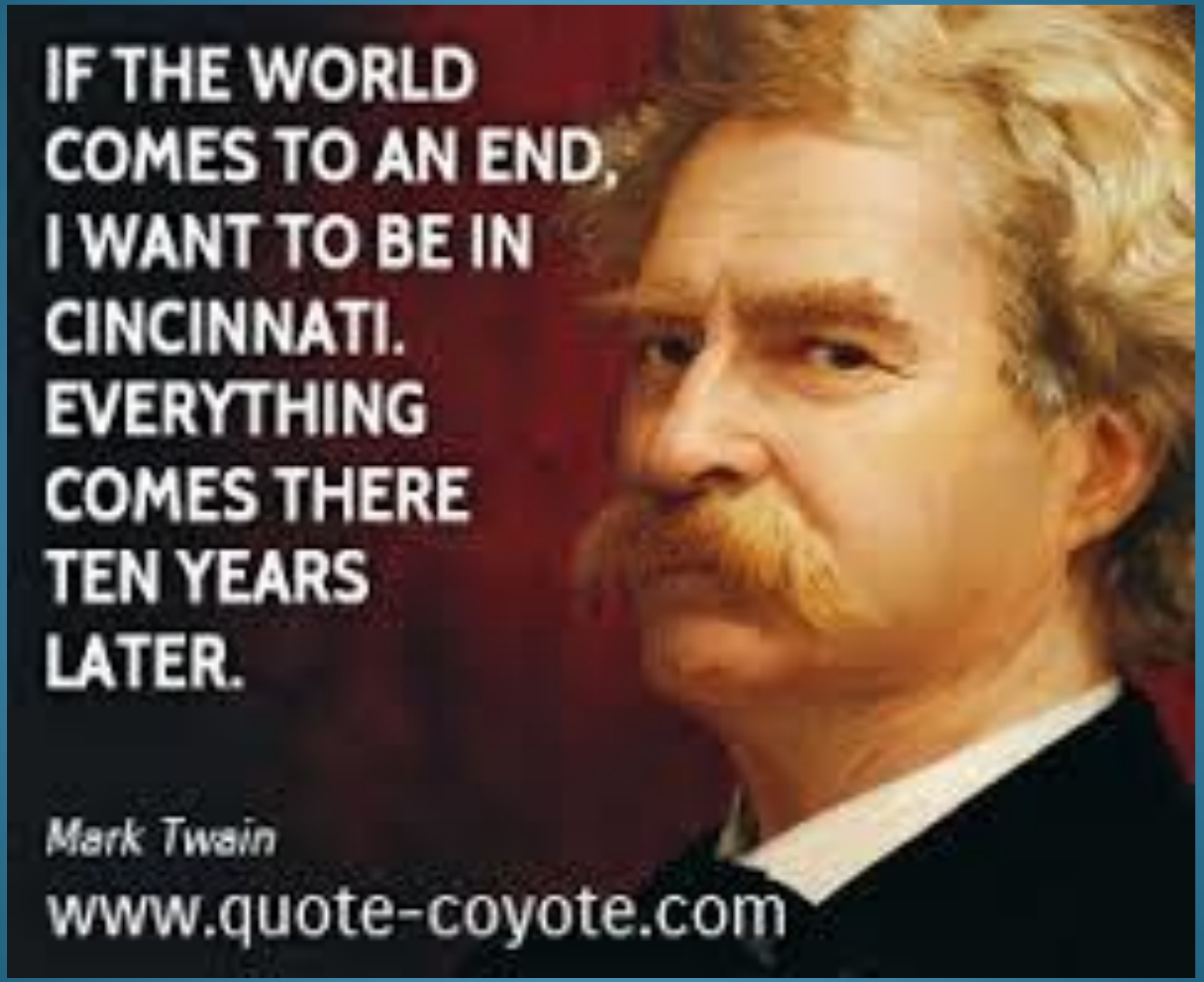
WKRP
JENNIFER MARLOWE


IF THE WORLD COMES TO AN END, I WANT TO BE IN CINCINNATI. EVERYTHING COMES THERE TEN YEARS LATER.
Mark Twain
www.quote-coyote.com

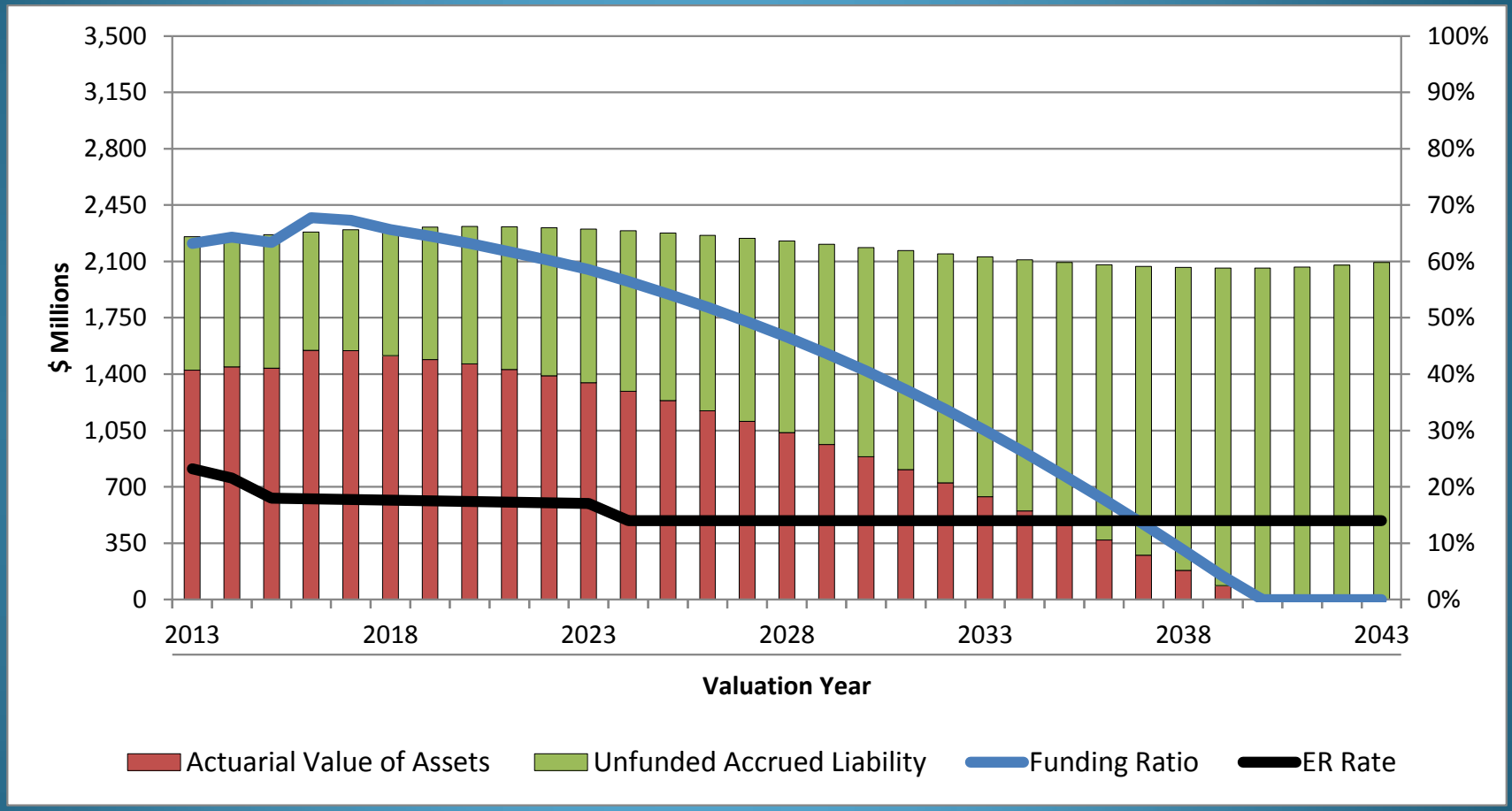
$874 million unfunded liability

62 percent funded

“Negative” outlook

Threat of receivership

"death spiral"



- Effective 7/1/2014, City (ER) contributes 14% indefinitely (plus an additional contribution for the ERIP through 2023)
- 3.00% Return for 2014 and then 7.50% annual return thereafter
- 3% Simple COLA for all Groups
- No COLA Holiday
- $100M cash infusion in 2016




CINCINNATI



Detroit



Retiree legal theories

- Unconstitutional taking
- Impairment of right to contract
- Promissory estoppel
- Laches
- General equity

Gamel v. City of Cincinnati

Ohio Supreme Court and U.S. District Court agree:

No “vested right” to retiree healthcare

But still –

Public sector unions sue

Retiree groups sue

Unrepresented active employees sue

Basic legal theory:

“It just ain’t fair.”

And, “The City should pay more.”

AFSCME v. City of Cincinnati

- Writ of mandamus
- Alleged that City had failed to follow its own formula for determining its pension contribution since 1983
- City would have had no choice but to seek immediate bankruptcy protection

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Election of new mayor

- November 2013 – John Cranley elected as Cincinnati's 69th mayor
- Harvard-educated litigator with public finance background
- Ran on removing "dark cloud" from City's finances

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The City re-evaluates its leverage

- *Gamel* ruling allowed City to liquidate ***entire*** 401(h) healthcare trust at its sole discretion

- Healthcare fund was 120 percent funded at $560 million thanks to previous litigation

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Unlikely inspiration:

2001 Cincinnati riots



Racial profiling consent decree

- Thirty-year agreement overseen by neutral federal judge
- Monthly meetings to review progress and compliance
- All stakeholders – civil rights groups, individual and class action plaintiffs, police brass – represented in final negotiations
- Extensive use of objective outside experts to collect and verify data

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Litigation strategy?

Sue us.

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Transparency?

Against it.

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Fed. Civ. R. 501 and 408

- These negotiations could NOT have taken place in the public eye
  - U.S. District Court Judge Michael Barret (S.D. Ohio) employed both the federal mediation privilege and a gag order on the parties
  - Allowed for confidential exchanges of proposals and actuarial data
  - Negotiations occurred over 18-month period
  - Quite simply, these talks would have been impossible under Ohio's broad open meetings law applied

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Fed. Civ. R. 24

The City invited the retirees to intervene in the new litigation

- Desire for an omnibus resolution was strong
- More than 8,000 retirees and their dependents/beneficiaries were impacted
- Allowed us to look at the big cost-drivers: COLA suspension periods and implementation of Medicare exchanges

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Final agreement included series of reforms which would have been unthinkable in 2009

Three-year COLA suspension period

Elimination of compound COLA

Stabilized City contribution

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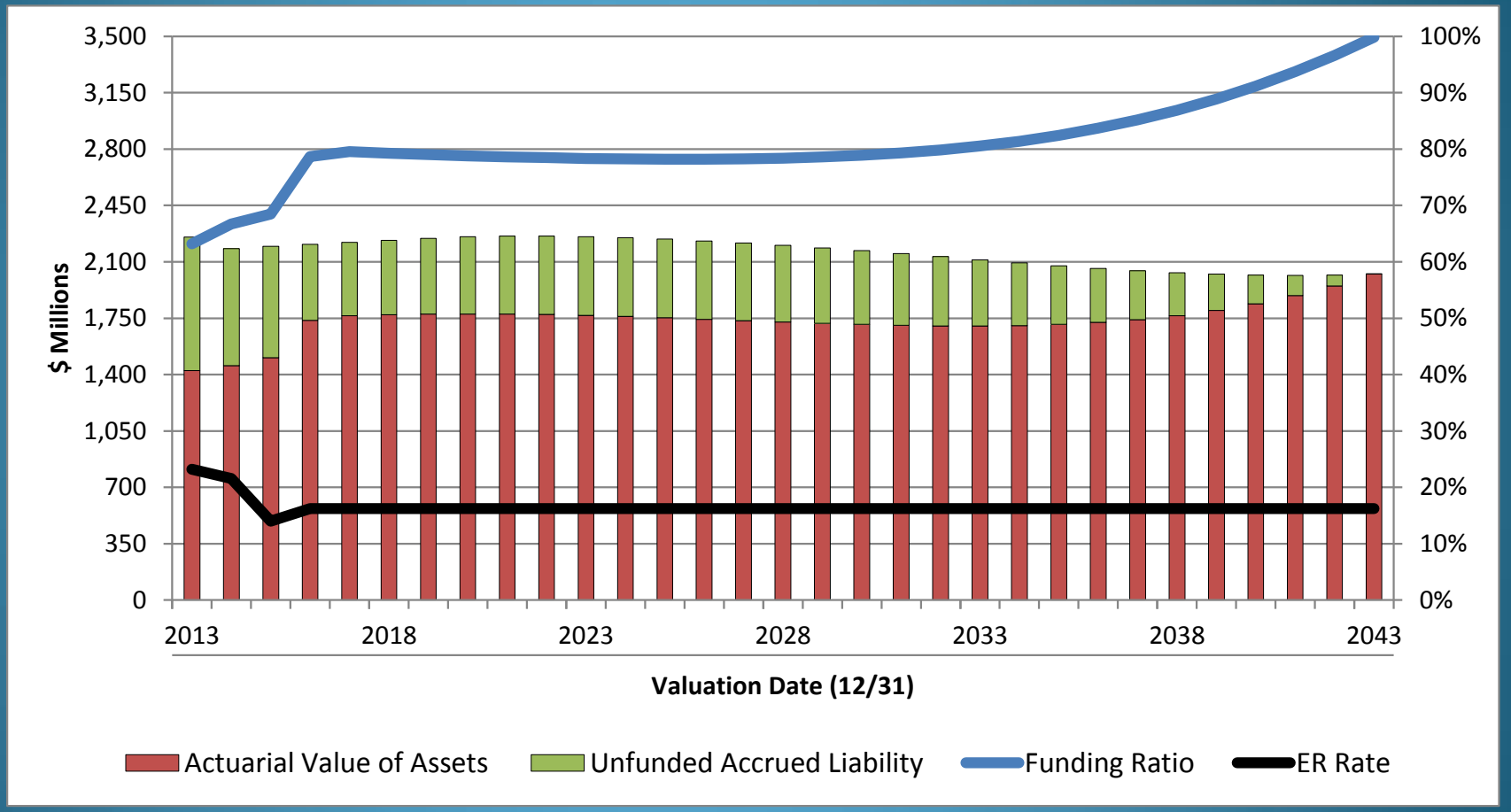
100 percent funded in 30 years



- City (ER) contributes 16.25% for all years beginning 1-1-2016
- Actual December 31, 2014 asset figures and then 7.50% annual return thereafter
- 3.0% simple COLA for members affected by agreement
- 3-year COLA suspension for members affected by agreement
- Proposed changes for active members vested as of July 1, 2011
- **$200M Cash Infusion in 2016**
- **Payoff of ERIP liability ($50.0 million) mid 2015**

Cavanaugh MacDonald, Segal and Xerox Buck were crucial players in the negotiations

- Ability to run real-time projections kept talks going during tough times
- Seen as honest brokers by all parties (even though the City retained them)
- Great witnesses at fairness hearing

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Importance of federal supervision

For the next 30 years, any changes to CRS benefits must be approved by the federal court

- Removes politics from process
- Increases role of objective actuarial data
- Ensures public input
- Settlement process allowed objectors multiple opportunities to voice concerns

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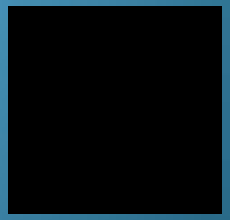

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