

Illinois Supreme Court Sinks Pension-Reform Law

Written by Rich Miller
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In a 6-1 decision, the Illinois Supreme Court last week struck down an attempt to force government retirees to pay more for their subsidized state health insurance. And while nothing is ever certain when it comes to the judiciary, the court made it pretty darned clear that Illinois' new pension-reform law is going to have real trouble passing constitutional review.

The court, led by Justice Charles Freeman, did not specifically rule on the pension-reform law, but declared "it is clear" that all pension benefits – including health insurance – are untouchable.

"We may not rewrite the pension-protection clause to include restrictions and limitations that the drafters did not express and the citizens of Illinois did not approve," the court ruled.

If that isn't a direct-enough message to lawmakers, the governor, and everybody else, I don't know what is. Pension benefits "shall not be diminished or impaired," the Constitution says, and the court said those words have a "plain and ordinary" meaning that does not allow them to be cut.

For good measure, the court added that the state Constitution's language on pension-benefit protections "was aimed at protecting the right to receive the promised retirement benefits, not the adequacy of the funding to pay for them."

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That last line is perhaps the most important part of the ruling, because it more than just suggests that the state's new pension-reform laws – which rely on a “police powers” argument because the state allegedly can't afford to make the promised pension-benefit payments – could very well be going right out the window.

The justices also sent a powerful message when they wrote that a “fundamental principle” they relied on in this ruling was that if there are any questions about legislative intent and the clarity of the language of a pension law, “it must be liberally construed in favor of the rights of the pensioner.”

Therefore, the court ruled, it is “obliged” to resolve any doubts “in favor of the members of the state's public retirement systems.”

Boom.

Looks like it's back to the ol' drawing board, fellas.

Attorney General Lisa Madigan's office pointed out that the pension-reform case and the health-insurance case have significant differences. The main difference is the emergency “police powers” argument. But, as the Supremes essentially ruled last week, the state's financial problems are not the Constitution's concern.

The state pension-reform legislation, passed last year, was projected to save taxpayers about \$200 billion over 30 years. The health-insurance reforms, which were specifically struck down last week, were projected to save up to around \$80 million a year.

To say that last week's Illinois Supreme Court ruling could very well wind up blowing a hole in the state's budget would be akin to saying our Air Force dropped a few firecrackers on Vietnam.

If the pension-reform law is the next to be struck down, there are few easy ways out of this fiscal

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nightmare.

Amending the state Constitution to remove that pension-protection language would take more than two years because we'd have to wait until the 2016 election to hold the plebiscite.

And even then, deleting the Constitution's pension-protection clause would almost surely only apply to new hires. In other words, all of the billions built up in the state's massive unfunded pension liability can't be touched.

Republican gubernatorial candidate Bruce Rauner's pension-reform plan involves freezing annual cost-of-living increases going forward and taking existing employees out of the pension fund altogether going forward. But last week's ruling was so sweeping and so all-encompassing that it's pretty tough to see how that would pass constitutional muster, either.

Senate President John Cullerton warned this very thing would happen years ago. He eventually negotiated a pension-reform deal with the unions. But that deal was quickly rejected by House Speaker Michael Madigan, conservative newspaper editorial boards, and much of the business community.

Cullerton then attempted to graft his pension-reform proposal onto the business-backed plan. If the business-backed plan was rejected by the Illinois Supreme Court, Cullerton's compromise would then automatically become law.

But that idea, too, was rejected out of hand.

So instead of having a union-approved plan in place, we could very well be stuck with no plan at all. Why would the unions go back to the bargaining table if they have the Supreme Court on their side?

The bottom line is it's going to take some radical, out-of-the-box thinking to resolve this issue, or

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the state will assuredly face even higher taxes and lots more budget cuts to pay this tab.

Rich Miller also publishes Capitol Fax (a daily political newsletter) and CapitolFax.com.