

Illinois High Court Takes Away Citizen Recourse

Written by Rich Miller

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The Illinois Supreme ruled last week that you, as a taxpayer, have no right to sue when your state tax money is spent illegally. The case, brought by the Better Government Association (BGA), sought to recover tax money that was allegedly used to subsidize Governor George Ryan's campaign operation. The BGA was attempting to use a state law that allowed such suits, but the court held that the law was unconstitutional. According to the court, the Illinois constitution gives the attorney general the sole right to file any suits to recover tax money.

Reformers were outraged, and they worried about what the decision could mean for other state laws, including one that allows lawsuits by government whistleblowers.

The reformers also pointed out the obvious fact last week that our attorneys general up to this point have not exactly been eager beavers when it has come to pursuing high-level state corruption. So, now, thanks to the court, government officials are basically free to misappropriate money free of civil consequences in state courts.

Attorney General Jim Ryan, for example, has refused to pursue any collection of illegally spent state moneys by the George Ryan campaign, claiming federal prosecutors have asked him to stay out of the case. Jim Ryan also refused to file an amicus brief on the case, a statement of where he stood on the issue, even though the case directly addressed the powers of his office. For all his talk of reform, Jim Ryan missed the boat yet again when it came to taxpayers' lawsuits.

The court's opinion was written by Justice James Kilbride, who portrayed himself as a populist reformer in his campaign two years ago. But Kilbride based much of his opinion on a case from the 1920s where the barest majority of the court ruled that the "public interest will not be served in permitting persons, without limitation, to institute actions ... against public officials when the attorney general has declined to act."

Of course, the state law, passed long after the ancient opinion was written, is a limitation in itself because it describes what sort of lawsuits can be filed to recover tax money.

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And the court also blatantly ignored other rulings that held that citizens do have a right to sue to stop illegal government activity or recoup illegally spent money. "In a representative government all powers of the government belong to the people in their sovereign corporate capacity," wrote the justices in a case called *Lane v. Stone*, in which the court allowed a citizen to recover tax money for the state that was illegally paid to a member of the General Assembly.

Or try this quote from *Jones v. O'Connell*: "If a portion of the inheritance taxes levied by the state has been and is still being misappropriated, a taxpayer, suing for himself and other taxpayers, has such a direct interest that he may maintain a suit in equity for the protection of that interest." In that case, the court forced a Cook County treasurer to return tax money he never should have been paid.

In another case, *McCord v. Pike*, the court upheld the right of taxpayers to stop their county from selling public property at prices below market value.

I could go on, but you get the general idea. What the court did last week was unanimously hide behind an ancient 4-3 decision while ignoring other precedents that could have allowed the BGA's suit to proceed.

Plus, the court, in its questionable wisdom, might have inadvertently prevented Illinois residents from taking advantage of a federal law going back to the Civil War that allows citizens to sue to recover tax money squandered on government corruption. Billions of dollars have been recovered for the U.S. treasury and state budgets throughout the country. But this ruling could mean that if Illinois is somehow cheated by a federal contractor, supplier, etc., then despite 140 years of tradition, from now on only the state attorney general could sue to recover damages, not citizens. And if that crooked contractor is a friend of the attorney general, that's just tough luck for the taxpayers.

State taxpayer suits, while rare, were just about the only checks on government power that Illinois citizens had at their disposal between elections. No more. The court has decided that if the attorney general can't be persuaded to clean up corruption, then average Joes and Janes have absolutely zero recourse. This decision is not only a blow to reform, it is an appalling slap at democratic ideals. Justice Kilbride ought to be ashamed of himself for writing this piece-of-crap opinion.

Rich Miller also publishes Capitol Fax, a daily political newsletter. He can be reached at (<http://www.capitolfax.com>).