Illinois Democrats concoct pseudo-legal justification for cutting public employee pensions

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Illinois Attorney General Lisa Madigan, a Democrat, is set to argue before the state Supreme Court that the state is entitled to break the Illinois state constitution's protection of public employee pensions through the exercise of the "police powers" granted to it under the Tenth Amendment to the US Constitution. This novel extension of the government's police powers would set a dangerous precedent, undermining any of the legal provisions guaranteeing the social programs upon which millions of workers rely.

The move to slash the constitutionally-protected pension benefits of Illinois public employees is part of a nationwide assault on workers' pensions and benefits. The precedent for these moves was set by the Detroit bankruptcy, in which workers' pensions were cut by 4.5 percent, and cost of living adjustments were eliminated.

In November of last year, Sangamon County Circuit Judge John Belz ruled that the 2013 Illinois law cutting pensions for state workers was unconstitutional in light of the Illinois Constitution's Article 13, Section 5, which states: "Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired."

In US constitutional law, the police powers of the states are generally held to include those that provide for the general welfare, health, and safety. They derive ultimately from the Tenth Amendment to the Constitution, which states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The argument of the Democratic Party and the ruling class in Illinois is that pension payments necessary to keep the funds solvent are imperiling the ability of the state to carry out the functions of government necessary for it to exercise these powers. The public employee pension funds in Illinois are currently underfunded by around $105 billion, due to the failure of the Illinois General Assembly to make adequate payments over a number of years and the basing of funding on assumptions of unrealistic investment gains.

The drive to gut pensions, ostensibly on the grounds that there is no money to pay for them, takes place despite the fact that the Illinois government has handed over hundreds of billions of dollars in tax incentives and other giveaways to corporations including Sears, Archer Daniels Midland, Office Depot, CME Group and others.

In his ruling on the lawsuit brought by the unions, which challenged the constitutionality of the law, Belz wrote, "The pension protection clause contains no exceptions, restrictions or limitations for an exercise of the state's police powers or sovereign powers." Immediately after the ruling, Madigan announced that she would appeal to the Supreme Court.

Speaking on the case, lawyers for the state said, "According to the circuit court's holding, for example, faced with an epidemic requiring the state to purchase and distribute vaccines or other costly medication, the state could not even temporarily reduce pension benefits to cover those costs," and further that "in a period of prolonged deflation" the state would not be able to "reduce pension benefits even if the corresponding rise in benefits caused by 3 percent

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annually compounded COLAs caused every dollar of state revenue to be spent on pension benefits."

The Illinois Supreme Court ruled in January that in order to fast-track the case, it would be limiting the ability of outside groups to file briefs on it, and that the main issue at stake would be the constitutionality of the state's arguments that it could use its police powers to trump the constitutional pension protections.

Last year's ruling by Judge Steven Rhodes in the Detroit bankruptcy case claimed that the Federal government's bankruptcy laws could override the Michigan Constitution's pension protections. Illinois, however, could not directly avail itself of the Detroit decision because states cannot file for bankruptcy under current laws. The state's lawyers were therefore obliged to seek a new legal basis for their larcenous aims.

It is notable that a reference article on police power states, "For two centuries, judges and scholars alike have repeatedly affirmed that the concept of the 'police power' resists a clear definition. Indeed, it seems that the leading characteristic of the police power is that its definition changes with shifting social economic realities and with changing political conceptions of the legitimate reach of governmental authority."[1]

Workers should understand that they face a capitalist class united in its desire to roll back workers' living standards to a level of poverty and misery not seen since the Great Depression, before the great working class struggles wrenched from the ruling class some small portion of the social wealth which they had created.

The arguments of Attorney General Madigan are shared by the entire Democratic Party, starting with the powerful Democratic House Speaker Michael Madigan—the Attorney General's father—and Democratic Mayor of Chicago Rahm Emanuel.

The city of Chicago filed a brief in support of Madigan's argument before the Supreme Court, which said that, "Failure to achieve reform for the Chicago funds would have a devastating impact on Chicago's economy and its delivery of essential services, as well as on the retirement security of current and former employees."

Chicago faces its own lawsuits, filed by AFSCME Council 31, the Chicago Teachers Union (CTU), Teamsters Local 700, the Illinois Nurses Association, and city laborers. The city contends that its pension cuts are not affected by the Belz ruling, since it had the agreement of a majority of city unions for its argument that without the cuts, the pension funds would become insolvent.

The city was backed by 11 unions—Bricklayers District Council, Carpenters Regional Council, IBEW 134, Iron Workers District Council, IUOE 150, IUOE 399, Laborers' District Council, Pipefitters 597, Plumbers 130, Sprinkle Fitters 281 and SEIU 73—which opposed the lawsuits and issued their own joint statement, defending the idea that the pensions would have to be cut in order to provide "certainty" that they would still exist in the future, a theme long advanced by Emanuel.

The unions have engaged in no mass actions or political education of workers on the nature of the assault on pensions. Instead they told workers that everything would be fine once the courts reviewed the law, and to just sit and wait it out.

The lawsuits filed by the unions, while ostensibly aimed at stopping the legislation, are in actuality part of a long-term union strategy to smother workers' opposition to austerity and other attacks on basic social rights by encouraging misplaced illusions in the court system, another arm of capitalist rule. Even if the Illinois Supreme Court upholds the circuit court ruling, the state will likely appeal to the federal court system, which has already rubber-stamped the Detroit bankruptcy.

[1] "Police Power." In *The Oxford Companion to the Supreme Court of the United States, 2 nd ed.* Oxford University Press, 2005.

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