

Illinois Supreme Court strikes down state pension cuts

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11 May 2015

On Friday, the Illinois Supreme Court upheld a lower court's ruling that struck down the 2013 law cutting pension and retirement benefits for state workers, public university and community college workers, and teachers outside of Chicago.

The court's decision makes clear the essentially illegal and criminal character of the drive by state and local officials to slash public employee pensions. The court case, however, in no way settles the question. The financial elite in this state, like their counterparts throughout the country and the rest of the world, views the pension benefits and social programs established through decades of social struggle as rightfully theirs, and will stop at nothing in their goal of reducing workers to penury.

The Supreme Court unanimously agreed with Sangamon County Circuit Court Judge John Belz's decision that the law—known as Senate Bill 1—is a violation of the Illinois Constitution, Article XXIII, Section 5, which states that pension benefits “shall not be diminished or impaired.”

Further, the Supreme Court rejected the argument put forward by Democratic Party Attorney General Lisa Madigan, daughter of Illinois House Speaker Michael Madigan, that the state's “police powers” allowed pension benefits to be cut in order to preserve government services, which would otherwise have to be cut in order for the state to make required payments to the under-funded pension funds.

Justice Lloyd Karmeier wrote that economic fluctuations were anticipated at the time the constitutional provision was added. “The law was clear that the promised benefits would therefore have to be paid and that the responsibility for providing the state's share of the necessary funding fell squarely on the legislature's shoulders.”

The decision noted that the “General Assembly could also have sought additional tax revenue.” It criticized the legislature for allowing a 2011 temporary income tax increase to lapse at the beginning of this year, bringing the regressive tax back down to 3.75 percent from 5 percent and leaving an additional \$1.6 billion deficit.

Indeed, the pension emergency that both the Democrats and Republicans have invoked to slash benefits is largely an engineered crisis. The entire reason for the existence of the so-called “unfunded pension liability” of approximately \$100 billion is that state legislators have for years refused to make adequate payments to the pension systems, preferring instead to use that money to fund other programs.

In addition, the pension funding formulas deliberately overestimated the returns on pension fund investments in order to further reduce the necessary state contributions. Karmeier alluded to this in the decision, noting that the crisis is one for which “the General Assembly itself is largely responsible.”

In the wake of the decision, both Democrats and Republicans are working feverishly to craft even more devastating attacks on retirement benefits than those in the law that was struck down. Even prior to the decision, Democrats, including Chicago Mayor Rahm Emanuel and those in the General Assembly, have been working closely with newly-elected Republican Governor Bruce Rauner—a close friend of Emanuel's—using him as cover to introduce billions of dollars worth of cuts to a host of state agencies and social programs.

Rauner in the past has advocated eliminating all public pensions and moving workers to 401(k) style retirement plans. His proposed state budget for next year anticipated cutting state pension payments by an

estimated \$2.2 billion. This would be accomplished through the introduction of a distinction between current benefits and future benefits as a way of getting around the constitutional protection. Under Rauner's proposal, all benefits currently earned by workers would be protected, but any future benefits would fall under the reduced Tier 2 pensions currently in place for newly hired workers.

Acknowledging that this would likely run afoul of the recent court decision, Rauner has proposed a constitutional amendment that would solidify the distinction between current and future benefits, arguing that, "Nobody, frankly, knows whether they're going to have a job in the future." However, a constitutional amendment would open the door to the elimination of retirement benefits by erasing the pension protection clause altogether—the eventual goal of the ruling elite. If the amendment were accomplished through the mechanism of a constitutional convention, it would open up the door for a reactionary rewriting of the entire document beyond the pension provision.

It is now likely that next year's state budget will go substantially further than the bloodbath envisioned in Rauner's proposal. Beyond the cuts to pensions, Rauner's budget incorporated spending cuts of \$4.18 billion, including \$1 billion from the Department of Healthcare and Family Services, \$400 million from higher education, and \$22 million from the Department of Public Health, among other programs. Additionally, in March House Speaker Madigan made a deal with Rauner in which the legislature agreed to let the governor cut spending for the current year by \$300 million and freeze \$26 million in programs ranging from mental health and autism to burials for the indigent.

Among other proposals Rauner has floated is an extension of the sales tax to cover services and amending state law to allow municipalities and other state government entities to declare bankruptcy in order to annul constitutionally protected pension benefits, following the precedent set in the Detroit bankruptcy case by Judge Steven Rhodes. These measures are now substantially more likely to get a hearing, even though the latter would not help the state avoid its own pension shortfall.

The court's decision, while not directly impacting the cuts to Chicago's pension systems, which are the

subject of a separate lawsuit, will likely mean they will also be reversed by the courts. Emanuel claims that his plan, which raised employee contributions from municipal employees and Chicago-area laborers by 29 percent and reduced annual increases to pensions, does not fall afoul of the decision because the cuts were "negotiated with labor," in other words, with the union leaders, rather than being made unilaterally.

Following the decision, the unions did their utmost to continue to fan illusions in the ability of workers to redress their grievances within the confines of the current political set-up. Having supported former Democratic Governor Pat Quinn—who signed the pension cut bill and was among the most prominent voices calling for pension cuts—for reelection, the unions did nothing to mobilize Illinois workers against benefit cuts, urging them to place all their faith in the courts. Following the most recent decision, they have pledged to work closely with the legislature to find ways to cut pensions without falling afoul of the constitution.



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