

# PENSION POINTERS



## Illinois Supreme Court Affirms the Constitutionality of Consolidation Law

By John E. Motylinski  
Ottosen DiNolfo Hasenbalg & Castaldo, Ltd.

Last year, an Illinois appellate court upheld Public Act 101-610, which consolidated the investment assets of downstate police and firefighter pension funds into two statewide investment funds. On January 19, 2024, the Illinois Supreme Court followed suit.

Seeking to address reported funding concerns afflicting police and fire pension funds across Illinois, the General Assembly passed Public Act 101-610 in 2019. The law shifted investment authority over the assets of around 650 local public safety pension funds to two new statewide funds, one for police and one for firefighters. Local pension boards retained control over benefit determinations, but they were required to transfer custody of assets to the state funds for pooled investment. The Act aimed to improve investment returns and relieve budget pressures on cities through consolidation.

In *Arlington Heights Police Pension Fund et al. v. Pritzker et al.*, a federation of pension funds and members sued Governor Pritzker, the Department of Insurance, and the two statewide investment funds alleging that the Act was unconstitutional. Their marquee argument was that the “pension protection clause” of the Illinois Constitution disallowed the asset consolidation because it deprived members of their right to vote for those who control investments. The Plaintiffs also invoked the constitutional provision prohibiting unlawful “takings” of private

**About the Authors:** John E. Motylinski is a partner with the law firm of Ottosen DiNolfo Hasenbalg & Castaldo, Ltd. in Naperville. John graduated summa cum laude from the University of Illinois College of Law and holds an undergraduate degree in political science from the University of Illinois at Urbana-Champaign. He focuses in the areas of local government, municipal, public pension, and labor and employment law.

property without compensation. The trial court and appellate court both rejected those claims.

The Plaintiffs then brought the dispute to the Illinois Supreme Court. The high court heard oral argument in that case in November 2023 and has now settled the dispute once and for all—the Act is constitutional.

During oral argument, the Plaintiffs reiterated their view that Public Act 101-610 “terminated the right of a five-person board for the police and a five-person board for the fireman to control and manage what had been since the pre-1970 Constitution protection clause.” As a result, the Plaintiffs contended that the voting power of pension participants was impermissibly impacted, and that was a violation of the Constitution.

The Defendants recapitulated their previous arguments that the consolidation increased investment efficiency, and the “the local funds stay as they always have been.” This includes maintaining their own assets, except to the extent they need to be invested, and continue to be governed by their own boards. The Defendants also highlighted that local trustees are still

elected in the same way as before Public Act 101-610. And most significantly, the Defendants stressed that the Act does *not* reduce any pension payments—at most, it changes the way those payments are funded.

The Illinois Supreme Court sided with the Defendants and found the Act constitutional. Writing for a unanimous court, Chief Justice Theis agreed with the general principle that, once an individual becomes a member of a public retirement system, any subsequent changes to the Pension Code that would diminish the benefits conferred by membership in that system cannot be applied to that individual. However, this protection only extends to “the benefits” attendant to membership in a pension fund.

The high court found that “the ability to vote in elections for local pension board members is not such a constitutionally protected benefit, nor is the ability to have local board members control and invest pension funds. Since the Plaintiffs have no constitutional right in how local pension funds are funded, “they similarly have no constitutional right regarding who invests”

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those assets." And even still, the "Act does not change plaintiff's right to elect members of their local funds' boards or the local boards' authority to determine the amount of benefits plaintiffs are entitled to receive." Instead, it "only changes the local boards' power to invest the assets of the local funds," and thus "has no impact on plaintiffs receiving their promised monetary benefits." Consequently, the Supreme Court found no constitutional problem with Public Act 101-610.

The Illinois Supreme Court also rejected the Plaintiff's "takings" argument. The Illinois Constitution provides that "private property" cannot be "taken or damaged for public use without just compensation as provided by law." But according to the court, "the Act does not take any of plaintiffs' private property." Contrary to the Plaintiff's claim that the Act requires them to fully transfer ownership of their private property, the court found that the Act merely "changes the control and management of the local funds' assets from one government-created pension fund to another type of government-created pension fund." Therefore, there was no unlawful taking either

With its unanimous opinion, the Illinois Supreme Court affirmed the legality of the state's consolidation of local police and firefighter pension investments. The high court confirmed that Public Act 101-610 does not diminish any constitutionally protected "benefits" or constitute an unlawful taking of private property. Consequently, this decision clears the way for full implementation of the consolidation law. ■

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