

PENSION POINTERS



Illinois Judges Challenge Pension Reform Law

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Two Illinois judges who are Tier 2 members of the Judges Retirement System of Illinois have filed a lawsuit challenging the constitutionality of a pension reform law that they claim unfairly diminishes their retirement benefits. The case—*Kievlan v. Judges Retirement System*, 2024 CH 01708, filed in the Cook County Circuit Court—could have significant implications for all public pension systems across the state, including firefighters' and police pension funds.

Plaintiffs—Patricia Kievlan, a recently retired St. Clair County Associate Judge, and Natosha Toller, a recently appointed Cook County Associate Judge—are suing the Judges Retirement System of Illinois (“JRS”), arguing that Public Act 96-0889, which became effective on January 1, 2011, and created the two-tier pension system, violates multiple provisions of the Illinois Constitution when applied to longtime public servants who became judges after the law’s effective date.

Once Tier 1, always Tier 1 in any Illinois pension system under the Reciprocal Act?

At the heart of the dispute is the plaintiffs’ contention that their pension benefits should be calculated based on their entire history of public service, not just their time on the bench. Both judges had extensive careers in public service before becoming judges, with Kievlan working as a community college professor and county board member, and Toller serving as a Cook County Assistant State’s Attorney and later with the state’s Judicial Inquiry Board.

Importantly, both Kievlan and Toller were Tier I participants in their respective initial public pension systems, which are part of the Illinois Pension Code’s “Retirement System Reciprocal Act” (40 ILCS 5/20-101 *et seq.*). Under the Reciprocal Act, public employees have an optional right to combine their future service in two or more Illinois pension systems which have adopted the Act into a proportional retirement annuity¹ (40 ILCS 5/20-101 and 20-115).

The lawsuit alleges that JRS’s decision to classify the plaintiffs as “Tier 2” participants—resulting in lower benefits and longer service requirements—violates the Pension Protection Clause found in Article XIII, Section 5 of the Illinois Constitution of 1970. This clause states that membership in any public pension system “shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.”

The plaintiffs argue that their pension rights vested when they first entered public service and became Tier 1 members

of state pension systems that are part of the Reciprocal Act², well before the 2010 law establishing Tier 2 took effect. Judge Kievlan began participating in the State Universities Retirement System in 1997, while Judge Toller joined the Cook County pension system in 2005. From the plaintiff’s standpoint, their vested pension rights included *options regarding those benefits*, even if they had not yet exercised those benefits. In this case, those options included combining their benefits under the Reciprocal Act. (See *Carmichael v. Laborers’ and Retirement Board Employees’ Annuity and Benefit Fund of Chicago*, 2018 IL 122793(2018))

However, in their response, the defendants argue that the Pension Protection Clause only protects existing rights that are created elsewhere. They contend that nothing in the Reciprocal Act or any other statute provides that plaintiffs locked in the JRS benefits plan that existed before they became JRS members. The

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1. Section 20-101 of the Reciprocal Act provides, “There is established a plan for the continuity and preservation of pension credit, in accordance with the provisions hereof, in the case of employees transferring employment from one governmental unit to another. The purpose of this plan is to assure full and continuous pension credit for all service in public employment which is covered by a retirement system. The acceptance of the provisions of this Article, shall be optional with the employee, or in the event of his death, with his survivor; however, the provisions of Section 20-120 shall be applicable to every person who applies for benefits from 2 or more retirement systems covered by this Article.” (40 ILCS 5/20-101)

2. Thirteen pension systems under the Illinois Pension Code have adopted the Reciprocal Act, and include the General Assembly Retirement System (Article 2), the Illinois Municipal Retirement Fund (Article 7), the Municipal Employees’ Officers’ and Officials’ Annuity and Benefit Fund (Article 8), County Employees’ and Officers’ Annuity and Benefit Fund of Cook County (Article 9), the Forest Preserve District Employees’ Annuity and Benefit Fund (Article 10), the Laborers’ and Retirement Board Employees’ Annuity and Benefit Fund of Cook County (Article 11), the Park Employees’ and Retirement Board Employees’ Annuity and Benefit Fund of Cook County (Article 12), the Metropolitan Water Reclamation District Retirement Fund (Article 13), the State Employees’ Retirement System of Illinois (Article 14), the Teachers’ Retirement System of the State of Illinois (Article 16), the State Universities’ Retirement System (Article 15), the Public School Teachers’ Pension and Retirement Fund (Article 17), and Judges’ Retirement System of Illinois (Article 18).

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defendants emphasize that the Reciprocal Act does not make plaintiffs' membership status or rights in JRS "relate back" to their first membership in any participating system.

Violations of Other U.S. and Illinois Constitutional Provisions

The lawsuit also alleges violations of the Equal Protection Clauses of both the U.S. and Illinois Constitutions, as well as the Illinois Constitution's prohibition against special legislation. The plaintiffs argue that the law creates arbitrary and unreasonable classifications among public employees, treating judges differently from other public servants with similar service histories.

In response, the defendants assert that members of JRS and members of other pension systems are not similarly situated, as they hold different positions and belong to different pension systems with different benefits and obligations. They argue that there is a conceivable rational basis for treating JRS (and the General Assembly Retirement System) differently, noting that these systems had the lowest funded ratios and more favorable Tier 1 benefits compared to other state-funded systems.

In a novel argument, the complaint challenges the enactment of Public Act 96-0889, claiming it violated the Illinois Constitution's "three-readings" requirement. This provision mandates that bills be read on three different days in each legislative chamber before passage. The plaintiffs allege that the pension reform bill was rushed through in a single day after significant last-minute changes, depriving lawmakers and the public of adequate time for review and debate.

The defendants counter that this argument is foreclosed by the "enrolled bill doctrine," which states that upon certification by the Speaker of the House and the Senate President, a bill is conclusively presumed to have met all procedural requirements for passage. They cite numerous Illinois Supreme Court

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decisions that have consistently upheld this doctrine.

According to the complaint, when Judge Kievlan's monthly benefits are calculated as if she were a Tier 1 member of JRS, her monthly benefits would be substantially greater than if calculated under Tier 2. For Judge Toller, still actively serving, the lawsuit claims she faces the prospect of working more years for a substantially lower benefit than if classified as a Tier 1 participant.

Potential Impact of Litigation

The case highlights ongoing tensions in Illinois over public pension reform efforts. The state has long grappled with underfunded pension systems, leading to various attempts at reform that have faced legal challenges. In 2015, the Illinois Supreme Court struck down a different

pension reform law, citing the Pension Protection Clause. (*In re Pension Reform Litigation*, 2015 IL 118585)

The lawsuit seeks declaratory judgments that Public Act 96-0889 is unconstitutional as applied to the plaintiffs and similarly situated judges. It also asks the court to reverse JRS's decisions and instruct the agency to recalculate Judge Kievlan's pension benefits and reclassify Judge Toller as a Tier 1 participant.

As the lawsuit progresses, it will be closely watched by public employees, pension administrators, and policymakers across Illinois. The outcome could have significant fiscal implications for the state and may shape future attempts at pension reform. A hearing date has been set in late October 2024 in the Chancery Division of the Cook County Circuit Court. ■

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