IN THE CIRCUIT COURT OF KANE COUNTY, ILLINOIS
SIXTEENTH JUDICAL CIRCUIT

Arlington Heights Police Pension Fund, *et.al.,*	)	
	)	Case. No. 21 CH 55
Plaintiffs,	)	
v.	)	
	)	Hon. Robert K. Villa
	)	Judge Presiding
Governor JB Pritzker, *et.al.,*	)	
Defendant	)	

SUMMARY JUDGMENT ORDER

After a lengthy hearing on the parties' respective cross motions for summary judgment, the Court took this matter under advisement. It is worth noting that where cross-motions for summary judgment are filed, the parties agree that only a question of law is involved and invite the court to decide the issues based on the claims presented and supported by the record. *Pielet v. Pielet*, 2012 IL 112064, ¶ 28. That does not mean that an issue of material fact cannot be found, nor does it obligate a court to render summary judgment. *Id.*

Having reviewed the parties' well-supported briefs, orally presented arguments and conducted a thorough review of the relevant case law on the issues presented, the Court finds this case appropriate for summary judgment.

Issues Addressed

Plaintiffs initiated this action seeking, *inter alia*[1], a declaration that Public Act 101-0610 ("the Act") is unconstitutional as a matter of law because the Act violates protections afforded Plaintiffs under the Pension Protection Clause (Ill. Const. art I, § 5) and Takings Clause (Ill. Const. art I, § 15) of the Illinois Constitution. Because the parties' briefs present a well-developed history of the Act and its impact on the former Articles 3 and 4 of the Illinois Pension Code, 40 ILCS 5/1-101*et seq.* (the "Prior Code"), such facts will not be restated here.

Generally, however, effective January 1, 2020 the Act reduced Illinois' approximately 650 locally controlled police and firefighter pension funds ("the Local Funds") down to two statewide funds – one for police pensions and one for firefighter pensions (the "New Funds"). Defendants contend at length that such a drastic change in how Illinois' police and firefighter pensions are managed (and invested) will bring much needed financial improvements beneficial to both the taxed public and fund beneficiaries. Plaintiffs reject this conclusion. Because Plaintiffs' claims are not due process claims where a rational basis or strict scrutiny analysis would apply, the General Assembly's purported reasoning is of no moment here.

Plaintiffs' claims focus instead on the Act's obvious change as to how pension fund members choose who will sit on their pension fund boards and

[1] See Order dated 9/17/21 dismissing the Plaintiff Funds as improper plaintiffs and addressing Defendants initial motions to dismiss. As such, the "Plaintiffs" and "Claims" herein refer only to the individual plaintiffs and their respective individual claims.

how the New Funds are initially funded. Previously, a five-member board governed the Local Funds, with two members elected by active members and one elected by beneficiaries (collectively herein "the members"). *40 ILCS 5/3-128; 5/4-121.* Each New Fund board has nine members elected statewide. The members are elected as follows: 1) three members are elected from among the officers or executives of the Local Funds' municipalities; 2) three members are elected from among the currently active participants in the local funds; 3) two members are elected from among the beneficiaries of the local funds elected by those beneficiaries; and 4) one member is recommended by the Illinois Municipal League and appointed by the Governor, subject to Senate confirmation. *40 ILCS 5/22B-115, 40 ILCS 5/22C-115.*

Plaintiffs allege that the Act violates the Pension Clause by severely diminishing and impairing their rights to vote for locally controlled pension fund board members. More specifically, that the change from voting locally and with a limited number of co-members to voting from among all active or beneficiary members statewide "substantially and unconstitutionally dilut[es] the voting power of each Individual." Plaintiffs contend that because their voting rights are derived from their status as active or beneficiary members those voting rights are among the "benefits" protected by the Pension Clause.

Plaintiffs separately claim the Act violates the Takings Clause (Ill. Const. 1970 art.1 §15) by taking or damaging Plaintiffs private property (money

presently in the Local Funds) for public use (to pay for the New Funds' startup and administrative costs and secure a possible $15M loan).

Analysis

1. The Act Significantly Impacts Plaintiffs' Voting Rights.

It is undisputed that prior to the Act, there were approximately 650 local police and firefighter pension funds in Illinois and that each fund was governed by a five-member board of directors; three of whom were elected by that funds active and retired members. It is also undisputed that the Act eliminated all of the Local Funds boards in favor of two statewide boards governing the New Funds. Plaintiffs' Amended Complaint illustrates the resulting impact the Act has on an individual member's voting right as follows:

> a. Plaintiff WILLIAM CZAJKOWSKI is an active participant in the PALOSHEIGHT POLICE PENSION FUND;
>
> Prior to the January 1, 2020 effective date of Public Act 101-0610, he had the benefit of a 3.5% vote (1 out of 28) for the two active- participant-selected members of the five-person board of the PALOS HEIGHT POLICE PENSION FUND, and thus, effectively a 1.43% say regarding that board's selection of an investment manager or advisor; but
>
> As a result of Public Act 101-0610, he will only have the benefit of a 1/13,804 vote (1 out of 13,804) for the three active-participant- selected members of the nine-person Permanent Board, and thus, effectively just a 0.0025% say regarding the Permanent Board's selection of an investment manager or advisor.

b. Plaintiff DAVID DELANEY is a retired-beneficiary participant in thePALOS HEIGHT POLICE PENSION FUND;

> Prior to the January 1, 2020 effective date of Public Act 101-0610, hehad the benefit of a 4.5% vote (1 out of 22) for the one beneficiary- selected member of the PALOS HEIGHT POLICE PENSION FUND, and thus, effectively a 0.91% say regarding the Board's selection of an investment manager or advisor; but
>
> As a result of Public Act 101-0610, he will only have the benefit of a 1/11,432 vote (1 out of 11,432) for the two beneficiary-selected members of the nine-person Permanent Board, and thus, effectively just a 0.0019% say regarding the Permanent Board's selection of an investment manager or advisor.

(Compl, ¶58)

While they concede having no control of what the elected board members invest in, etc., Plaintiffs maintain their protected benefit lay in "voting the bums out" at the end of their term and electing new board members Plaintiffs believe might better manage their fund. As illustrated above, the Act undeniably diminished the weight of each individual's board member vote. Not only numerically, but in the practical reality that engaging with member voters as 1 of 28 (Plaintiff CZAJKOWSKI) or 1 of 22 (Plaintiff DELANY) provides a more meaningful opportunity to influence which board members are voted for than being 1 out of 13,804 (Plaintiff CZAJKOWSKI) and 1 out of 11,432 (Plaintiff DELANY) members scattered across the State. Whether this violates Plaintiffs' constitutionally protected rights is not claimed under traditional voting rights protections.

2. Traditional Voting Rights Claims are Not at Issue.

Our supreme court has long held "that legislation affecting any stage of the election process implicates the right to vote." See *Graves v. Cook Cty. Republican Party*, 2020 IL App (1st) 181516, ¶ 54, 445 Ill. Dec. 126, 136, 166 N.E.3d 155, 165 (referencing a history of related voting cases). In the case at bar, one of those cases, *Tully v. Edgar*, 171 Ill. 2d 297, 215 Ill. Dec. 646, 664 N.E.2d 43 (1996), was discussed at some length during oral argument and must be addressed here.

In *Tully*, a public act amended the process of selecting the University of Illinois' Board of Trustees from a public election to an appointive system. Then-serving board members were summarily dismissed before their six-year terms had expired and their replacements were thereafter appointed and installed. Although the *Tully* plaintiffs acknowledged the General Assembly had the power to change their offices from an elective to an appointed position, they claimed that, without a cause finding, removal from their positions mid-term violated several provisions of both the United States and Illinois Constitutions. *Id.* at 303-304. *Tully* concluded the General Assembly had acted unconstitutionally because it nullified the voters' choice by eliminating, midterm, the right of the elected officials to serve out the balance of their terms. *Tully*, 171 Ill. 2d at 312. Of note, is that the *Tully* court observed that the legislature could have achieved its goal of switching to an appointed member board without encroaching on the

right to vote if it had allowed the elected trustees to finish their terms and then be succeeded by appointed trustees. *Id.* at 312.

A year after *Tully* was decided, the Illinois Supreme Court issued its opinion in *E. St. Louis Fed'n. of Teachers, Local 1220 v. E. St. Louis Sch. Dist. No. 189 Fin. Oversight Panel,* 178 Ill. 2d 399, 414, 227 Ill. Dec. 568, 577, 687 N.E.2d 1050, 1059 (1997)[2]. In that case, the Circuit Court of St. Clair County, had determined an emergency financial assistance statute was unconstitutional because the statute provided for the removal of an elected superintendent of a school district and several school board members. On direct appeal, our supreme court reversed the trial court after finding the statute constitutional on its face. The Supreme Court ultimately determined, however, that the statue violated the removed officials' procedural due process rights by not affording them notice and an opportunity to be heard before removal pursuant to the statute. *E. St. Louis Fed'n.of Teachers, Local 1220,* 178 Ill. 2d at 422.

The main distinction between the case at bar and the aforementioned cases is that those cases involved traditional "voters rights" claims such as procedural due process, equal protection, constitutional vagueness, improper delegation of legislative authority, and other guarantees found in the United States and Illinois Constitutions (*e.g.*, U.S. Const., amends. V, XIV; Ill. Const. 1970, art. I, § 2, art. III, § 1). After an objective review of Plaintiffs' Amended

[2] Plaintiffs cited to *E. St. Louis Fed'n.of Teachers, Local 1220* in its Combined Response to the Defendants' Motion to Dismiss and Counter Motion for Summary Judgment to support the Plaintiff Funds argument they had standing to bring a Takings Clause claim.

Complaint, the Court finds that these types of claims are not at issue here. Rather, Plaintiffs' claims are limited to whether the Act violates the Pension Clause or Takings Clause. It is axiomatic that a court's determination at summary judgment must be limited to the record before it. Therefore, the Court cannot determine this case against traditional voting rights considerations.

3. Voting is Not Presently a "Benefit" under the Pension Clause.

The Parties' briefing provides a comprehensive history of Illinois Supreme Court cases involving challenges to legislation brought under the Pension Clause. This Court's review of each cited authority (as well as a further Shepard's® review of same for additional authority) confirms what we all know – Illinois' reviewing courts have yet to hold that the right to vote for pension fund board members falls within the protections of the Pension Clause. Nevertheless, the parties' briefs and oral arguments are properly focused on whether the scope of the Pension Clause's term "benefits" is restricted to monies due pension members upon retirement. After lengthy consideration of the developed case law, the clear answer is – sort of, but mostly yes.

Less than a year before Plaintiffs initiated this case, the Illinois Supreme Court issued its opinion in *Williamson Cty. Bd. of Comm'rs v. Bd. of Trs. of the Ill. Mun. Ret. Fund*, 2020 IL 125330, 449 Ill. Dec. 248, 178 N.E.3d 1099. The quoted passage below (with internal citations intact) provides the framework for deciding this case.

This court's jurisprudence on the Illinois Constitution's pension protection clause is well developed. Found in article XIII, section 5, of the Illinois Constitution, the clause provides that

> *"[m]embership 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." Ill. Const. 1970, art. XIII, § 5.*

Our decisions have uniformly construed its plain meaning to protect ***any benefit*** *of the enforceable contractual relationship arising from membership in one of the pension or retirement systems of the State and any local unit of government or school district from diminishment or impairment. Carmichael v. Laborers' & Retirement Board Employees' Annuity & Benefit Fund, 2018 IL 122793, ¶ 25, 429 Ill. Dec. 677, 125 N.E.3d 383; In re Pension Reform Litigation, 2015 IL 118585, ¶ 45, 392 Ill. Dec. 1, 32 N.E.3d 1 (Heaton); Kanerva v. Weems, 2014 IL 115811, ¶ 38, 383 Ill. Dec. 107, 13 N.E.3d 1228.*

In other words, "a public employee's membership in a pension system is an enforceable contractual relationship, and the employee has a constitutionally protected right to ***the benefits*** *of that contractual relationship." Jones v. Municipal Employees' Annuity & Benefit Fund, 2016 IL 119618, ¶ 29, 401 Ill. Dec. 454, 50 N.E.3d 596.* ***The constitutional protection is broad because it "protects all of the benefits that flow from the contractual relationship arising from membership in a public retirement system****." Matthews v. Chicago Transit Authority, 2016 IL 117638, ¶ 54, 402 Ill. Dec. 1, 51 N.E.3d 753 (citing Kanerva, 2014 IL 115811, ¶ 38). That protection "attach [es] once an individual first embarks upon employment in a position covered by a public retirement system, not when the employee ultimately retires." Heaton, 2015 IL 118585, ¶ 46. Effectively, the clause prohibits unilateral legislative action that diminishes or impairs the constitutionally protected benefit. Matthews, 2016 IL 117638, ¶ 54 (citing Kanerva, 2014 IL 115811, ¶ 40).*

Williamson Cty. Bd. of Comm'rs, 2020 IL 125330, ¶¶ 31-32 (emphasis added) (also citing, *Buddell v. Board of Trustees*, 118 Ill. 2d 99, 514 N.E.2d 184, 112 Ill. Dec. 718 (1987) (denial of the option to purchase military service credit from the State University Retirement System held unconstitutional under the Pension Clause).

The language emphasized (by this Court) in the above quote appears to suggest that the "benefits" protected under the Pension Clause must be broader than the simple payment a member is to receive upon retirement. Firstly, the term "benefits" is plural; which, on its face, cannot be read to mean a singular (undefined) something. The *Williamson* opinion seemingly makes that more clear by referring to a "broad" protection of "all the benefits that flow from the contractual relationship arising from membership in a public retirement system." *Id.* A careful review, however, of each case cited with approval in *Williamson* suggests the Illinois Supreme Court does not mean what this language suggests.

That is because all of the cases using the "broad protection" and "all benefits" language when holding that an act of the General Assembly violated the Pension Clause (*Carmichael, In re Pension Reform Litigation (Heaton), Kanerva, Buddell, Jones*) involve Plaintiffs who were denied a "benefit" that could be directly tied to a change in the value of their future retirement payments. These included, for example, removal from membership in IMRF (*Williamson*), changing health insurance premium subsidies for retirees (*Kanerva),* changing the time-period to purchase military service credit from the State University Retirement System (*Buddell),* and the right to earn service credit on a leave of absence to work for a local labor organization (*Carmichael).*

Thus, the seemingly expanding language suggesting there is more than one benefit ("benefits") and that "all rights" should be "broadly" protected has, in

practice, not been applied as Plaintiff argue it should. Instead, it has been applied only to public acts that directly affect the value of a plaintiff's pension benefit. "The common-law doctrine that holds that courts should not compromise the stability of the legal system by declaring legislation unconstitutional when it is not required is "[o]ne of the most firmly established'" in constitutional law (citations omitted). . . and one that [the Illinois Supreme Court] has applied with diligence." *People v. Brown*, 2020 IL 124100, ¶ 27, 444 Ill. Dec. 612, 619, 164 N.E.3d 1187, 1194. In this case, the Court finds that it cannot extend the term "benefits" beyond the reach of prior Illinois Supreme Court cases (that this Court is aware of) to find the challenged legislation unconstitutional against the Pension Clause's protections.

Accordingly, this Court grants Defendants' motion for summary judgment as to Count I. Plaintiffs' cross-motion for summary judgment is denied.

4. The Takings Clause is Not Implicated.

Plaintiffs remaining claim (Count III) alleges the Act violates the Illinois Constitution's takings clause, which provides that "private property shall not be taken or damaged for public use without just compensation as provided by law." *Ill. Const. 1970, art. I, § 15.* Specifically, Plaintiffs allege that the Act "diminishes and impairs the pension benefits to which each [Plaintiff] is entitled, including but not limited to ultimately bear all costs of transition up to $15,000,000, plus interest." (Amend Compl. ¶87). As an initial matter, it is unquestionable that monies within the Local Funds pay for the New Funds' startup costs for administration and operation. Under Count III that fact only presents injury to Plaintiffs if such monies are "property" within in the meaning of Illinois' takings clause.[3] Our supreme court provides a comprehensive analysis of takings clause jurisprudence in *Empress Casino Joliet Corp. v. Giannoulias*, 231 Ill. 2d 62, 324 Ill. Dec. 491, 896 N.E.2d 277 (2008). Although not a recent opinion, it remains good case law on the subject.

Empress Casino involved a challenge to the 2006 passing of Public Act 94-804, which imposed, for a two-year period, a 3% surcharge on four riverboat casinos in Illinois that had adjusted gross receipts (AGR) of over $ 200 million in 2004. Five other Illinois riverboat casinos that had AGRs below $ 200 million were not subject to the surcharge. *Empress Casino Joliet Corp.*, 231 Ill. 2d. at

[3] Although Plaintiffs refer only to Illinois' takings clause, because the federal takings clause is so similar ("nor shall private property be taken for public use, without just compensation.") (U.S. Const., amend. V) and is applicable to the states via the fourteenth amendment (U.S. Const., amend. XIV), it is appropriate to apply federal case law to Plaintiffs' claim.

65. The four casinos subject to the surcharge argued "that a takings analysis should apply whenever the government takes property, whether real or monetary, from one party and gives it to another and that there is a need for heightened scrutiny to ensure a public purpose is being served." *Id.* at 81. The supreme court rejected this argument on grounds that both state and federal takings clauses apply only to government action against real property.

> *"It is well settled that the takings clauses of the federal and state constitutions apply only to the state's exercise of eminent domain and not to the state's power of taxation. . . . The same principle applies to fees, whether for certain services or licensing. In Mlade v. Finley, 112 Ill. App. 3d 914, 445 N.E.2d 1240, 68 Ill. Dec. 387 (1983), the plaintiffs challenged certain circuit court filing fees as a violation of, inter alia, the takings clause. Mlade, 112 Ill. App. 3d at 916. The appellate court rejected the plaintiffs' argument "because the 'just compensation' [takings clause] provisions (Ill. Const. 1970, art. I, sec. 15; U.S. Const., amends. V and XIV, sec. 1) apply only to exercises of the power of eminent domain, not to applications of the authority to raise revenue for public purposes."*
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> *Id.* at 82.

After citing a voluminous number of state and federal cases adhering to this principle, the court rejected the casinos' arguments under *Northern Illinois Home Builders Ass'n v. County of Du Page*, 165 Ill. 2d 25, 649 N.E.2d 384, 208 Ill. Dec. 328 (1995). In that case, plaintiff homebuilders challenged a municipality's imposition of impact fees on new residential communities in order to fund road improvements. The stated purpose of the impact fee was to fund road improvements needed because of expected traffic growth from the new development. *Northern Illinois Home Builders Ass'n*, 165 Ill. 2d at 30. Without much further analysis, the supreme court summarily rejected plaintiffs' takings

argument under *Northern Illinois Home Builders Ass'n*; stating simply, "The fee at issue in Northern Illinois Home Builders Ass'n was inextricably tied to real property and, thus, a takings analysis was appropriate." Empress Casino Joliet Corp. at 83 (emphasis added).

In this case, Plaintiffs Takings Clause claim cannot be tied to real property as required under Illinois' taking clause jurisprudence. Although, money damages can be sought in a takings clause claim, there are no allegations or evidence presented that Plaintiffs currently drawing their pension benefit have suffered a present or will suffer a future loss in benefit payment. Similarly, there is no evidence that those still employed will suffer a similar fate when they eventually retire. Hopefully, such losses will never materialize. For purposes of Plaintiffs claim, however, the potential for such loss is as speculative as the Defendants' stated hope that the Act will lead to the New Funds being more affordably managed and better invested. Finally, there is no argument or evidence presented that the monies transferred from the Local Funds to the New Funds are being used for a different public use (funding road improvement) that impacts Plaintiffs' present or future retirement benefits.

Accordingly, this Court grants Defendants' motion for summary judgment as to Count III. Plaintiffs' cross-motion for summary judgment is denied.

Conclusion

For all the aforementioned reasons, the cross motions for summary judgment are decided in favor of Defendants and against Plaintiffs.

Plaintiffs' cross motion for summary judgment is denied.

Date: 5/25/22

Hon. Robert K. Villa