

DROWNING IN DEBT: A LEGAL ANALYSIS OF PENSION SYSTEMS IN THE STATE OF ILLINOIS

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INTRODUCTION

As of August 27th, 2018, Illinois' unfunded pension liabilities totaled \$250 billion.⁴³ McKinsey & Company has identified Illinois as the most fiscally unstable state in the nation.⁴⁴ Moody's and S&P Global Ratings rate Illinois' debt at BBB-, the lowest credit record of all time for an American state.⁴⁵ Russia has the same debt rating as Illinois.⁴⁶ As Moody's wrote in its report, "The rating reflects Illinois' extremely large net pension liabilities and a long history of unbalanced financial operations that culminated in a record level of overdue bills last year."⁴⁷ Moody's outlook is negative, and the next downgrade will push Illinois into junk status.

Illinois' fiscal crisis has both short- and long-term components. More recently, the General Assembly has simply been inadequate at spending within its means; Illinois has not had a balanced budget since 2001. And while the damage that almost two decades of profligate spending, especially the recent 736 day budget standoff, have inflicted on the State's finances cannot be dismissed, this paper will analyze the State's fiscal health by focusing on the graver threat: billions in pension debt.⁴⁸ Organized into four sections, this essay will first document the

⁴³There is actually some discrepancy over how much pension debt Illinois is actually in. Other estimates range between \$110-130 billion. Moody's total is the most recent estimate this author was able to find. Chea, Pisei. "Research Announcement: Moody's - Unfunded US State Pension Liabilities Surge in Fiscal 2017 Due to Poor Investment Returns." *Moody's Investors Service*, 27 Aug. 2018.

⁴⁴"These U.S. States Are the Most Fiscally Stable." *U.S. News & World Report*, U.S. News & World Report, 2018.

⁴⁵Schuster, Adam. "Illinois Bonds Once Again Rated Just above Junk." *Illinois Policy Institute*, 10 Apr. 2018.

⁴⁶"Russia - Credit Rating." *Trading Economics*, Trading Economics, 2018.

⁴⁷ Moody's Investors Service.

⁴⁸For 736 days, Illinois operated without a constitutionally-mandated budget. This was a political crisis, with newly elected Republican Governor Bruce Rauner and the Democratic-controlled General Assembly unable to agree on spending cuts and tax increases. The crisis ended when 10 Republicans joined with Democrats to override the Governor's veto on July 6th, 2017. But it was too late, for lasting damage had been done: over a billion in late payment interest penalties, stalled and shuttered public programs, a dearth of strategic investment in

General Assembly’s decades-long dereliction of duty in its chronic underfunding of the State’s pension systems. Next, the analysis section will examine the General Assembly’s 2013 attempt at pension reform, and the Illinois Supreme Court’s rationale for declaring that legislation unconstitutional in 2015 under Article XIII § 5 of the Illinois Constitution. In light of the constraints this pension protection clause places on the ability of the General Assembly and Executive to modify existing pension contracts, this paper will then explore recommendations for reform, centered around municipal bankruptcy proceedings, adjustments to future State employee benefit contracts, and the passage of a constitutional amendment.

HISTORY

1917-1970: The Seeds Are Sown

Pension troubles have plagued the State of Illinois for over a century.⁴⁹ As early as 1917, the General Assembly characterized the state of municipal pension systems as one of insolvency due to funding mechanisms which were “entirely inadequate for paying the stipulated pensions when due.”⁵⁰ Warnings continued over subsequent decades. The Illinois Public Employees Pension Laws Commission of 1949 noted “every fund in Illinois suffers at this time from actuarial insolvency.”⁵¹ That same body, with strikingly similar rhetoric twenty years later,

infrastructure and higher education—not to mention the evaporation of any semblance of any remaining public or investor trust in the government of the State of Illinois. As a result of this crisis, the State’s total backlog unpaid bills reached \$16.7 billion. While the State was able to refinance and payoff some of this load, over \$8 billion remains. In addition, the most recent budget, oddly heralded as balanced by Democrats and Republicans, has a \$1.2 billion deficit. Forebodingly, this woe has taken place amidst a national economic upswing. One can only imagine the stress the next inevitable serious economic downturn will inflict on Illinois—a state teetering on the brink in a period of healthy economic expansion.

⁴⁹There are five separate State-funded pension systems for public employees: the General Assembly Retirement System (GRS), the State Employees’ Retirement (SERS), the State Universities Retirement System (SURS), the Teachers’ Retirement System (TRS), and the Judges Retirement System (JRS).

⁵⁰Report of the Illinois Pension Laws Commission of 1917. Quoted in: Supreme Court of Illinois. *In Re PENSION REFORM LITIGATION (Doris Heaton Et Al., Appellees, v. Pat Quinn, Governor, State of Illinois, Et Al., Appellants)*. 8 May 2015, 4.

⁵¹Report of the Illinois Pension Laws Commission of 1949. *Ibid.*, 4.

characterized the level of pension funds in 1969 as “below mandatory statutory requirements as expressly provided in the governing law... [and were] grossly insufficient.”⁵² In 1969, the overall funding rate for Illinois’ public pension system was 41.8 percent.

Concern over this lack of funding was a potent issue at the State’s 6th Constitutional Convention, held in 1970. One delegate, arguing for constitutional protections for pensions, stated, “Despite the consistent warnings from the Pension Laws Commission... the General Assembly has failed to meet its commitments to finance the pension obligations on a sound basis.”⁵³ The supposed solution, which was eventually ratified, was the addition of Article XIII § 5 to the State’s Constitution. The provision 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.”⁵⁴

1970-1993: The Crisis Begins

However, if this provision was designed to send a message to the General Assembly to clean up its act, it failed. In the decade that followed, no substantial reforms were implemented. Up until 1981, Illinois simply paid the costs of pension benefits as they came due. Economic difficulties in 1982 caused the State to abandon this ad hoc approach, and from 1982-1995 the General Assembly allocated a constant level of funds. But the State did not respond to rising costs, and the value of this steady contribution was corroded. Pension reform was attempted in 1989, but it floundered. In the early 1990s, the General Assembly even began to fail to keep up with its inadequate yearly contributions, diverting pension dollars into the State’s general

⁵²Report of the Illinois Pension Laws Commission of 1969. *Ibid.*, 5.

⁵³“Record of Proceedings, Sixth Illinois Constitutional Convention.” *Illinois Digital Archives*, The State of Illinois, 1972.

⁵⁴“Constitution of the State of Illinois.” *Illinois General Assembly Home Page*.

revenue fund. Analyzing the State's approach during this period in a 2013 cease and desist letter, the Securities and Exchange Commission (SEC) characterized it as having "no relation to actuarial calculations of liability."⁵⁵

1994-Present: The Crisis Escalates

In 1994, the General Assembly was finally able to pass a plan to put the system on a path to solvency. The legislation mandated that the State contribute sufficient funds to meet 90 percent of the actuarial costs of the pension systems through 2045. But in reality, this reform was toothless. Instead of immediately meeting 90 percent of the actuarial costs of the system, the State implemented a "ramp period." This ramp period allowed the State slowly increase its contributions to the system, essentially betting that future legislatures would somehow find billions of extra dollars to contribute.⁵⁶ By 1995, the pension system was only 50 percent funded. To make it worse, the General Assembly could not even abide by the funding levels set forth in the ramp period, declaring pension "holidays" in 2005 and 2006. In these years, the State unilaterally decided it would only meet half of its required contributions. These gimmicks added \$2.3 billion to the State's pension debt. To top it off, these maneuvers were not adequately disclosed to the State's bond holders.⁵⁷

In the period between 1996-2010, the State's unfunded pension liabilities increased by \$57 billion. And while market crashes in 2001 and 2008 pushed the State's pension systems

⁵⁵The letter accused the State of misleading bondholders in its financial reports. "Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing A Cease-and-Desist Order." Securities and Exchange Commission, 11 Mar. 2013, 3.

⁵⁶*The State of Illinois Retirement Systems: Funding History and Reform Proposals, A Civic Federation Issue Brief.* The Civic Federation, 30 Sept. 2008, 13.

⁵⁷As the SEC damingly concludes in its 2013 letter "Rather than controlling the State's growing pension burden, the Statutory Funding Plan's contribution schedule increased the unfunded liability, underfunded the State's pension obligations, and deferred pension funding. This resulting underfunding of the pension systems enabled the State to shift the burden associated with its pension costs to the future and, as a result, created significant financial stress and risks for the State." SEC, 3.

further into the red, there is no question where responsibility for the crisis lies: “The State’s insufficient contributions under the Statutory Funding Plan were the primary driver of this increase, outweighing other causal factors, such as market performance and changes in benefits.”⁵⁸ At the end of June 2013, the State had funding to cover 41.1 percent of pension liabilities.⁵⁹ As the Illinois Supreme Court drily observed in 2015, “The funding rate was thus nearly unchanged from the 41.8 percent funding rate prior to the ratification of the 1970 Constitution and its protection clause.”⁶⁰ In April 2018, the Pew Research center pegged the State’s pension funding at 36 percent.⁶¹ Pension liabilities have begun to encroach on the government’s budget, consuming one fourth of all State spending. The nationwide average is 4 percent.⁶²

ANALYSIS

In another attempt at reform, the General Assembly enacted Public Act 98-599 in 2013. This legislation combined cuts to benefits with an injection of funds into the pension systems. According to the plan’s drafters, the bipartisan plan would save the State between \$90 and \$100 billion by delaying retirement ages up to five years for employees under 45, capping the maximum salary used in benefit calculations, and ending three percent compounded cost of living increases.⁶³ Public employees immediately filed five separate lawsuits challenging the legislation, which were consolidated in *Heaton v. Quinn*. The plaintiffs claimed that the State, by reducing pension benefits, violated Article XIII § 5 of the Illinois Constitution.

⁵⁸SEC, 4.

⁵⁹Godofsky, David R., and Emily Hootkins. “Illinois Supreme Court Affirms Constitutional Protection of Public Pensions.” *Benefits Law Journal*, vol. 28, no. 3, 3.

⁶⁰*Heaton v. Quinn*, 8.

⁶¹The U.S. average is 66 percent. Wisconsin’s pension systems are 99 percent funded.

⁶²Mennis, Greg. “The State Pension Funding Gap: 2016.” *The Pew Charitable Trusts*, 12 Apr. 2018.

⁶³The State of Illinois. The General Assembly. *Public Act 098-0599*. 2013.

In *Heaton v. Quinn*, the State does not dispute the meaning of Article XIII § 5, but instead attempts to argue its “reserved sovereign power,” or police power, permits the modification of pension contracts in the interest of the public good.⁶⁴ The thrust of the State’s argument rests on three points. First, due to its police powers, the General Assembly possesses the authority to modify obligations imposed on it by the State Constitution when “such action is reasonable and necessary to advance an important public purpose.”⁶⁵ Further, due to havoc the Great Recession wreaked on State finances, a sluggish economic recovery, the State’s sheer amount of pension liabilities, and the State’s poor credit rating, a reduction in pension liabilities is necessary to stave off greater fiscal disaster. Public Act 98-599 represents a fair and reasonable compromise under such circumstances. Thus, the State’s “reserved sovereign power” trumps Article XIII § 5, the pension protection clause.⁶⁶

The Illinois Supreme Court rejected the State’s reasoning. In a 7-0 ruling, the Court began by acknowledging that the State, exercising its police powers, may enact “regulations reasonably necessary to secure the health, safety, morals or general welfare of the community, even though contracts may thereby be affected.”⁶⁷ However, the Court refuses to accept the State’s reasoning because it would render Article XIII § 5 a nullity. The State’s police powers and economic emergency are not adequate justifications, for it “would require that we allow the

⁶⁴By the time *Heaton v. Quinn* was argued in 2015, there was no discrepancy on the meaning of Article XIII § 5. *Kanerva v. Weems* is an important precedential case. In a 2014 6-1 decision, the Illinois Supreme Court found the meaning of the language of the pension protection clause to be plain and unambiguous. This holding is essential to understanding the Court’s opinion in *Heaton v. Quinn*, for the Court cites its *Kanerva v. Weems* ruling: “We held in that case that the clause means precisely what it says: ‘if something qualifies as a benefit of the enforceable contractual relationship resulting from membership in one of the State’s pension or retirement systems, it cannot be diminished or impaired.’” *Kanerva vs. Weems* further tied the State’s hands, for the Court ruled that health benefits and cost of living adjustments in pensions, if offered at the time of an employee’s hiring, may not be reduced.

⁶⁵ *Heaton v. Quinn*, 13.

⁶⁶Godofsky, 3.

⁶⁷*Heaton v. Quinn*, 18. The Illinois Supreme Court cites a 1954 case: *City of Chicago v. C. & NW RY. CO.*

legislature to do the very thing the pension protection clause was designed to prevent it from doing.”⁶⁸ The Court finds that the State of Illinois has not surrendered its sovereign authority. In contrast, the people of Illinois, the ultimate sovereign, have rightfully and legitimately restricted the power of the General Assembly to act through the authority of the State Constitution:

“If police powers could be invoked to nullify express constitutional rights and protections whenever the legislature felt that economic or other exigencies warranted, it is not merely pension benefits of public employees that would be in jeopardy. No rights or property would be safe from the State. Today it is nullification of the right to retirement benefits. Tomorrow it could be renunciation of the duty to repay State obligations... Under the State’s reasoning, the only limit on the police power would be the scope of the emergency.”⁶⁹

The Illinois Supreme Court was not dismissive of the financial challenges facing the State, but it was adamant that the law must be upheld: “Crisis is not an excuse to abandon the rule of law. It is a summons to defend it. How we respond is the measure of our commitment to the principles of justice we are sworn to uphold.”⁷⁰ While the Court’s lofty language is laudable, it neither tempers the crisis nor offers a solution. The facts remain: Illinois has \$250 billion in pension liabilities, and the State descends deeper in debt every year.⁷¹

Pension Contracts: A Brief State and Federal Comparison

The Illinois Supreme Court’s ruling does not leave the State much room for addressing its pension liabilities. Article XIII § 5 does not permit unilateral pension benefit reductions under

⁶⁸Ibid., 22.

⁶⁹The opinion goes on to read: “The legislature could do whatever it felt it needed to do under the circumstances. And more than that, through its funding decisions, it could create the very emergency conditions used to justify its suspension of the rights conferred and protected by the constitution. If financial markets were rational, this prospect would not buoy our economy, it would ruin it.” The Court’s understanding of the fundamental importance of trust in a market-based system is quite philosophically sophisticated and eloquently stated. Ibid., 25.

⁷⁰Ibid., 26.

⁷¹ It is the author’s opinion that the negative ramifications of striking down Public Act 98-599 cannot be overstated. Actuarial projections stated that the State’s pension systems would have reached full funding by 2039. Required 2016 pension contributions would have been reduced by \$1.2 billion. These cost savings could have given the General Assembly more room to negotiate, possibly nipping the state’s budget impasse in the bud and preventing the subsequent income tax increases. Instead of lasting reform, the past five years have seen further degeneration in the State’s finances, with no solution in sight.

any circumstances. While most states protect pensions under contract law, Illinois is an outlier in the sense that it expressly prohibits any negative alteration, even in instances of fiscal emergency.⁷² Even more unusually, not only are current benefits a worker has earned protected, but also the formula under which those benefits are calculated throughout an employee's career.⁷³ Such jurisprudence conflicts with how other states have interpreted pension contract law: "Other state supreme courts have upheld pension reforms very similar to Illinois' 2013 reforms, even when recognizing that pensions are contractual benefits that cannot be diminished or impaired."⁷⁴ One of these states is Colorado, where the courts ruled that reducing cost of living increases did not violate state employees' contractual rights, making a distinction between earned pension benefits and predicted increases stemming from a cost of living adjustment.⁷⁵ Such a proposal was part of Public Act 98-599's package of reforms. In contrast to the Illinois Supreme Court, other state courts have been more willing to show deference to good-faith legislative actions seeking to address unsustainable pension benefit systems.⁷⁶

The Illinois Supreme Court's jurisprudence is also a departure from how contract law has been interpreted at the federal level. Derived from Supreme Court precedent, federal courts apply a three-part test to determine whether legislation altering contracts is permissible under the Contract Clause, which nominally prohibits states from "impairing the obligation of contracts."⁷⁷ First, the courts determine if a contract exists. If a contract exists, the next question is whether the

⁷² New York is the only other state. Godofsky, 4.

⁷³ The State is free to unilaterally increase benefits, but once the benefit accrual formula has been set, it may not be altered.

⁷⁴ Schuster, 13.

⁷⁵ Colorado is also significant because its pension systems, while not as bad as Illinois, are less than 50 percent funded.

⁷⁶ Another example is Hawaii. While that State's constitution protects earned pension benefits, courts have ruled that future benefits are not necessarily protected.

⁷⁷ *U.S. Constitution*. Art. I, § 10.

legislation imposes an impairment to the execution of the contract. If the impairment is found to be substantial, the court must decide whether the legislation is “reasonable and necessary to serve an important public purpose.”⁷⁸

But while the three-part Contract Clause test is widely accepted, “the decisions of state courts applying this analysis to state pension contracts vary considerably.”⁷⁹ Illinois is a case in point. As this paper has explored, there is no question pension contracts exist, and the invalidated Public Act 98-599 attempted to significantly impair the execution of those established contracts. Further extrapolating the federal test, it would appear that the threat of insolvency would represent an interest compelling enough to allow Illinois to seek relief—which Public Act 98-599 represents. But the Illinois Supreme Court decided otherwise; the explicit guarantees of Article XIII § 5 are too strong to be subordinated by the State’s police powers.

PROPOSALS

The Illinois Supreme Court’s ruling naturally raises the question of what avenues remain available to policymakers and citizens who seek pension reform. This section of the paper will outline several broad possibilities, including municipal bankruptcy, legislative action to alter the structure of future benefit contracts, and the passage of a constitutional amendment to modify Article XIII § 5.

Municipal Bankruptcy: A Possible Escape Hatch

In a hypothetical scenario, a federal court could possibly trump Illinois’ pension protection clause in bankruptcy proceedings, assuming state bankruptcy would function similar to municipal bankruptcy—although nobody is quite sure how the state bankruptcy would work.

⁷⁸Cloud, Whitney. “State Pension Deficits, the Recession, and a Modern View of the Contracts Clause.” *The Yale Law Journal*, vol. 120, no. 8, 2011, 2204.

⁷⁹Ibid.

At the moment, this discussion is moot, for federal bankruptcy law does not allow states to declare bankruptcy.⁸⁰ However, municipalities with their state's consent can seek Chapter 9 federal bankruptcy relief. Two recent cases illustrate how bankruptcy proceedings can address pension debt and how they could offer some relief for Illinois taxpayers.

In 2013, the city of Stockton, California filed for bankruptcy, with significant pension liabilities included among the city's debts. While Stockton ultimately decided to honor its pension contracts, in the course of proceedings, a federal bankruptcy judge ruled that retirement debt can be reduced in bankruptcy—as with any other debt: “California public employee retirement law ... is simply invalid in the face of the supremacy clause of the United States Constitution.”⁸¹ A similar ruling was made in Detroit 2013 bankruptcy proceedings, where city employees ultimately saw their pensions cut 4.5 percent and the end of cost of living increases. In a ruling that allowed Detroit to cut its pensions, putting it on a path to solvency, a federal bankruptcy judge stated, “Pension rights are contract rights under the Michigan constitution... It has long been understood that bankruptcy law entails the impairment of contracts.”⁸² Extrapolating these cases to the Illinois context, municipal bankruptcy could offer some relief to taxpayers, for local governments' pension debts—\$50 billion of the total—would then be eligible to be renegotiated.⁸³ Of course, Illinois is not a municipality, and the State itself remains on the hook for the rest of its unfunded liabilities. But since Illinois' pension debt is held at both

⁸⁰State bankruptcy is uncharted territory, and if authorized by Congress would present the Supreme Court with several novel questions, including whether the contracts clause prohibits states from declaring bankruptcy in in the first place. On the other side, the U.S. Constitution does give Congress power to enact “uniform Laws on the subject of Bankruptcies throughout the United States.” *U.S. Constitution*. Art. I, § 8.

⁸¹Megerian, Chris. “Stockton Bankruptcy Ruling a Blow to Pensions.” *Los Angeles Times*, Los Angeles Times, 1 Oct. 2014.

⁸²“Judge Picks Supremacy Clause in Detroit's Bankruptcy Battle.” *National Constitution Center* – 3 Dec. 2013.

⁸³Chicago being one of those localities with significant debts. Ingram, Jonathan. “\$203 Billion and Counting: Total Debt for State and Local Retirement Benefits in Illinois.” *Illinois Policy Institute*, 4 Apr. 2017

local and State-wide levels, municipal bankruptcy is a possible escape hatch to simplify two intertwined debt crises and reduce taxpayer liability.⁸⁴

Working in Tandem: Legislative Action & Constitutional Reform

In evaluating the options for the State itself, it appears there are three: improbably clawing together the money to meet its massive liabilities, reducing pension benefits for future employees, and repealing Article XIII § 5. The first option should be taken off the table. While it may be seductive to speculate that Illinois could simply raise enough tax revenue to pay off its debt, this is not economically sound policy in a State that already has a high tax burden, especially in relation to its Midwestern peers.⁸⁵ The second option, while an important part of any potential reform package and crucial to the State's ultra-long term fiscal health, does not address the liabilities the State already owes. The third option is time-consuming with no guarantee of success. Alone, neither the second nor third options is sufficient. But enacted together, these two reforms may be able to offer a glimmer of hope.

Without raising the tax burden or changing the constitution, there are substantial reforms Illinois can enact. First, the State should stop paying for the employer share of pension and health care costs for public school employees. As the system currently operates, local districts negotiate contracts, but the State pays the agreed upon benefit levels, even though teachers are not State employees. This practice creates a moral hazard, for local districts negotiate teacher

⁸⁴Due to space constraints, this paper is only attempting to give a broad outline of what municipal bankruptcy might entail and will not be addressing the intricacies of municipal bankruptcy or which Illinois towns should pursue it.

⁸⁵Income and corporate taxes were recently raised as a condition to end the recent budget standoff. Greater taxes threaten to make the problem worse, for Illinois is already experiencing a net population outflow and is ringed by low-tax states: Indiana, Wisconsin, Iowa, and Missouri. However, to reach a compromise, tax increases may be necessary. This author is not against raising taxes per se, but is simply attempting to criticize the pervasive 'tax and spend' mentality that dominates Illinois politics. Raising revenue without attempting to address the underlying costs is no longer enough. A report by the Commission of Government Forecasting and Accountability calculated Illinois would need to raise taxes by more than 30 percent, or \$224 billion, to cover pension liabilities.

contracts without ever paying for the pension benefits themselves. Instead, local districts should bear the burden of these costs, saving an estimated \$2 billion per year over the next several years.⁸⁶ In a cash-strapped State, every potential cost-savings option needs to be pursued. Along with having local districts fully assume the pension contracts they negotiate, the State should institute a 401(k)-style benefit plan for new hires.⁸⁷ While the State has made its pension benefits less generous for employees who were hired after 2010, these plans are still part of a defined-benefit system. A 401(k)-style plan for future hires would save the State money, would be more flexible for employees if they change jobs, and would comply with the Illinois Constitution.⁸⁸

But while these reforms would do much to help Illinois put its future fiscal house in order, they leave the State's current liabilities, the pensions owed to present employees, unaddressed. Unless the State wants to enact a lengthy program of austerity worse than the two-year budget standoff or risk a fatal negative feedback loop with spiraling tax increases, comprehensive reform that puts the State on a path to solvency similar to Public Act 98-599 will require a constitutional amendment. Article XIII § 5 does not necessarily have to be repealed entirely, but it would need to be modified to allow for the reduction of the unearned pension benefits of current employees. Such an approach is ethical and practical, for it fairly protects benefits that have been already earned while giving the State fiscal flexibility to adjust how future unearned benefits are calculated.⁸⁹

⁸⁶Schuster, 17.

⁸⁷ A 401(k) is a retirement plan where employees and employers allocate an agreed upon percentage of the employee's salary, instead of agreeing upon defined benefits.

⁸⁸Since the Constitution only specifies that benefits must not be reduced, not the type of retirement plan. Under a 401(k)-plan, employees would also have greater savings. In one hypothetical scenario, if teachers had enrolled in 401(k)-type plans in 1976 and retired in 2016, they would have accrued \$400,000 more than what the State pension systems pays out. In fairness, 401(k) returns are rooted in market performance, and so the past is not necessarily indicative of the future. However, pension funds also rely on market returns (and sometimes vastly overestimate their predicted performance), so either way all retirement systems involve an element of inherent risk.

⁸⁹ Assuming employees are given fair notice.

It is admittedly an uphill battle, but if a constitutional amendment can be enacted, fortunately the legislative program already exists: Public Act 98-599.⁹⁰ Since Illinois has accrued more liabilities in the years since it was struck down, the reforms within the original package would have to be stiffened. But the act remains a viable blueprint. To save more money, possible tweaks include further raising the retirement age for younger employees and suspending the cost of living increase for a specified time period.⁹¹

CONCLUSION

In closing, this paper has analyzed the State of Illinois's pension liabilities, the State's pension contract jurisprudence, and presented a few possible avenues for reform. While the situation is dire, it is not hopeless. Never has the necessity been greater for swift and bold action. While it is easy to lampoon decades of incompetent State government, readers should heed Illinois' fiscal crisis as an early warning, for other states and even the federal government are threatened with looming pension and entitlement crises.

This author is not hopeful that current State officials have the political and moral courage to challenge the status quo and enact meaningful pension reform and constitutional change. On November 6th, voters elected J.B. Pritzker as governor, who campaigned on fresh spending and tax increases. While Governor-elect Pritzker should be given a fair and genuine opportunity to lead, his campaign rhetoric does not bode well for the State's finances.⁹²

⁹⁰ A Constitutional amendment would need a three-fifths majority in General Assembly then approval by voters. The earliest this could happen is 2020.

⁹¹Public employees would cry foul, but given that given that inflation is 2%, a constitutionally protected 3% cost of living adjustment represents a real pension benefit increase, compounded year after year. Further, with life spans increasing, any pension system, including Social Security, will likely need to raise its retirement age to remain solvent. As long as employees close to retirement are exempt, this author would argue freezing cost of living adjustments and raising the retirement age are fair and equitable proposals.

⁹²With Democrats now in control of both the legislative and executive branches, one positive is that a unified government will bring an end to the partisan budget spats of that dominated the Rauner administration. Maxwell, Mark. "How Rauner, Pritzker Pension Plans Compare." *WCIA*, 19 July 2018.

For decades, policymakers have been able to shirk and avoid effectively dealing with the pension crisis, but as Lincoln said, “You cannot escape the responsibility of tomorrow by evading it today.” The laws of gravity have not been suspended, and if the State does not enact structural reforms, sooner or later the house will come crashing down. It is Illinois taxpayers who will be forced to pick up the pieces.

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