

# IS WELCHING ON PUBLIC PENSION PROMISES AN OPTION FOR ILLINOIS?

## *AN ANALYSIS OF ARTICLE XIII, SECTION 5 OF THE ILLINOIS CONSTITUTION*

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### Abstract

Illinois has the largest unfunded public pension liabilities of any state in the nation. This article considers whether the Illinois General Assembly may, without violating Article XIII, Section 5 of the 1970 Illinois Constitution, unilaterally cut the pension benefits of *current* public employees as a means to reduce the \$96.8 billion the State owes to its five public pension systems. Article XIII, Section 5 (*i.e.*, the “Pension Clause”) of the Illinois Constitution provides that: “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.”

This article concludes that legislation enacted to unilaterally reduce the pension benefits of current employees would violate the Pension Clause based on the Clause’s text and origins, constitutional convention debates revealing the framers’ intent, contemporaneous news articles demonstrating voters’ understanding of the Clause, and a host of court decisions construing the Clause. Indeed, at the time of the 1970 Illinois Constitutional Convention (“Convention”), the State pension systems were no better funded than they are today. This circumstance, coupled with the fact that the legislature already had a poor track record of making its actuarially-required pension contributions, caused public employee groups to lobby Convention delegates to include the Pension Clause. These groups reasoned that constitutional protection was necessary because the General Assembly would renege on its pension obligations to public servants during a financial crisis. Convention delegates agreed and included the Clause to foreclose that result.

The article finds that the Pension Clause not only makes a public employee’s participation in a pension system an enforceable contractual relationship, but also constitutionally protects the pension benefit rights contained in the Illinois Pension Code when an employee joins a pension system, including employee contribution rates. The Clause also safeguards pension benefit enhancements that are later added during employment. Further, the Clause ensures that pensions will be paid even if a pension system defaults or is on the verge of default. Finally, while the Clause bars the General Assembly from adversely changing the benefit rights of current employees via unilateral action, these rights are “contractual” in nature and may be modified through contractual principles. In sum, while welching on public pension promises is not an option for Illinois as some legal and civic commentators have suggested, legitimate contract principles provide a solution to mitigate this crisis. A copy of Mr. Madiar’s full article and appendices as well as other background information can be found at the Illinois Senate Democrat’s website ([www.senatedem.ilga.gov](http://www.senatedem.ilga.gov)) after searching under “Great Pension Debate.”

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