

Michigan: Public school employees seek U.S. Supreme Court review on taxability of retirement benefits



David M. Kall | Thursday, July 20, 2017

In 2011, Michigan lawmakers passed [2011 PA 38](#) and related legislation, which made substantial revisions to the income tax levied on individuals, including retirees. Of special significance is that for taxpayers born between 1946 and 1952, the legislation eliminated the existing exemptions for retirement and pension income, though the exemptions for Social Security income and several other types of income remain in place while the taxpayer is less than 67 years old.

Background

Thomas Okrie is a retired Michigan public school teacher, born in 1946. He retired in July 2000. In the case, Okrie represents a proposed class of similarly situated retired Michigan state and public school employees who were born after 1945, and who retired before 2011 P.A. 38 went into effect.

The legal action began in July of 2013, when the plaintiff filed his complaint alleging a breach of contract against various state entities, including the then-governor Rick Snyder, the State Employees Retirement System, and the Michigan Public School Employees Retirement System. In September, the complaint was amended to include, among others causes of action, several constitutional claims, such as violations of the contract clause, the takings clause and the due process clause under the state and federal constitutions.

Okrie, and all of the proposed class members, had begun receiving pension benefits from their retirement plans prior to the effective date of 2011 PA 38. The crux of the plaintiffs' stance is the unlawfulness of the

allegedly retroactive application of 2011 PA 38 and related laws, which eliminated the tax exemptions for the retirees' defined-benefit pensions, even though, they say, the exemptions are entitled to protection under the contracts clause, as set forth in several state and U.S. Supreme Court decisions.

Retroactive application of laws is disfavored

The petitioners assert that as a general matter, retroactivity is disfavored, because it "can deprive citizens of legitimate expectations;" statutes may not be applied retroactively "if they abrogate or impair vested rights." The presumption against retroactivity is based on "[e]lementary considerations of fairness[,] which dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted."

Additionally, Okrie contends that 2011 PA 38 would impermissibly attach new legal consequences to certain events, such as the retirees' irrevocable retirement decisions, which were completed before the law's enactment. Okrie further argues that "the retroactive application of 2011 P.A. 38 upsets [petitioners'] 'reliance interests' and 'settled expectations' that their defined-benefit pensions were not subject to state or local taxation after they retired based upon the law in effect at the time of their retirement."

Constitutional claims

Next, petitioners contend that the statute's retroactive application runs afoul of the federal contracts clause because it operates as a substantial impairment of a contractual relationship. It does this, they argue, by taking away the deferred compensation that petitioners earned for their years of governmental service.

Similarly, the petitioners argue that "the retroactive application of 2011 P.A. 38 also violates the takings clause," which protects against a governmental seizure without just compensation. Here, the taking deprives the petitioners of "an integral part of their retirement benefits...which they [] earned as deferred compensation in exchange for their years of governmental service...after vesting in one of the State's public pension plans."

As for their due process argument, petitioners assert that the allegedly retroactive application of the law violates "elementary considerations of fairness." Through an analogy to a case from 1806, they stress that "fairness is the primary motivating factor supporting the presumption against retroactivity."

Predictability is needed for adherence to the law

Finally, petitioners quote a legal scholar for the proposition that all laws should be prospective, open, clear, and stable. To that end, the retroactive application of 2011 PA 38 impinges on the rule of law, and compromises its ultimate goal of guiding the behavior of those subject to it.

Okrie and the others filed their cert petition in the United States Supreme Court on June 28, 2017.



David M. Kall

[Team member bio](#)