

Writer's direct dial:

(312) 762-9460

Writer's email:

gdivito@tdrlawfirm.com

April 13, 2010

To Whom It May Concern:

The March 10, 2010 Tribune Op-Ed "*Don't Call this Pension Reform*" by R. Eden Martin of the Civic Committee of the Commercial Club of Chicago and the March 27, 2010 Tribune Editorial, "*Yes You Can,*" claim that Governor Quinn and the General Assembly should have gone further in bringing pension reform to Illinois by reducing the pensions not only of new employees, but of existing employees as well. My colleague, John Fitzgerald, and I have looked closely at this important State issue, and our conclusion is inescapable – as a matter of law, the pension rights of current employees simply cannot be diminished as Mr. Martin and the Tribune contend. (Our legal analysis is enclosed.)

The plain language of the Illinois Constitution's Pension Protection Clause (Article XIII, Section 5) states that, "*Membership in any pension or retirement system of the State . . . shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.*" As courts in this State have confirmed, this language is crystal clear. Public employees become members of a pension system at the time of hire or shortly thereafter and, once they become members, their pension rights are set and cannot be "diminished or impaired."

This is exactly what the framers of the State's 1970 Constitution intended. At the Constitutional Convention, one of the co-sponsors of the Pension Protection Clause succinctly illustrated the point: "Benefits not being diminished really refers to this situation: If a police officer accepted employment under a provision where he was entitled to retire at two-thirds of his salary after twenty years of service, that could not subsequently be changed to say he was entitled to only one-third of his salary after thirty years of service, or perhaps entitled to nothing."

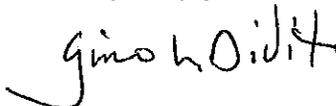
Not surprisingly, as it noted in a 1996 decision (*McNamee v. State of Illinois*), the Illinois Supreme Court has "consistently invalidated amendments to the Pension Code where the result is to diminish benefits" to which State employees acquired a vested right when they entered the pension system. Legal analysis that Sidley Austin LLP performed for the Civic Committee glosses over this controlling authority, misconstrues a comment that the Illinois Supreme Court made in a 1974 decision (which has been distinguished in

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subsequent cases), and incorrectly relies on a 1979 Illinois Attorney General opinion that has been trumped by subsequent Illinois Supreme Court decisions.

Any pension reform effort will depend on the strength of its legal foundation. The Governor and the General Assembly have been careful to comply with the Illinois Constitution's Pension Protection Clause, as well they should. The alternative would be a short-lived pension reform that is invalidated by court order after protracted litigation, which would be a disservice to the taxpayers.

Very truly yours,

A handwritten signature in black ink that reads "Gino L. DiVito". The signature is written in a cursive, slightly slanted style.

Gino L. DiVito

GLD/sf