Amicus Curiae Letter

April 20, 2020

Lyle W. Cayce
United States Court of Appeals
Fifth Circuit
Office of the Clerk
F. Edward Hebert Building
600 South Maestri Place, Suite 115
New Orleans, LA 70130-3408

Re: Cause # 18-0423 Deagan et al v. Dallas Police and Fire Pension Fund the 5th Circuit Court of Appeals

Dear Mr. Cayce:

INTRODUCTION AND STATEMENT OF INTEREST

Please distribute this letter brief, which is submitted on behalf of Amicus.

I am writing this letter in support of the Appellant's Degan, Eddington, Gurley, McBride and McGuire in regards to their case currently on appeal to the Federal 5th Circuit Court of Appeals in Louisiana. This letter is submitted on behalf of myself and any who are similarly situated who may benefit if it is reviewed favorably. I am not an attorney. I have prepared this letter entirely by myself and have paid all costs associated with it. I have not consulted any of the Plaintiff's attorneys nor any Plaintiffs in preparing it. This letter is written primarily as a result of the recent COVID-19 pandemic and the immediate need for Retirees to have access to their DROP monies which have been involuntarily converted to annuity.

I am a retired City of Dallas First Responder (police officer) and 35-year member of the Dallas Police and Fire Pension Fund (DPFP) and voluntary participant in the Deferred Retirement Option Program (DROP) program.

Statement of the Case.

In late 2015 the Dallas Police and Fire Pension Fund began reporting extensive investment losses and announced the plan was in need of restructuring. A plan was put forth but the plan sponsor, the City of Dallas, refused to commit to a pension obligation bond for funding. Active and Retiree DROP account holders began withdrawing the money from their accounts creating a "Run on the Bank". On December 8, 2016 the Board, in conjunction with the Plan sponsor, locked down the plan to Lump sum withdrawal. In May of 2017 The Board, The City of Dallas and the Texas State Legislature passed HB3158 converting the held DROP monies to annuity on September 1, 2017.

The COVID-19 Pandemic

Since the recent Texas Supreme Court opinion in this case The Coronavirus, or COVID-19 pandemic, has created a worldwide health crisis that has not been seen in this country since the Spanish flu of 1918. As of the date of this writing it is the largest cause of death in the United States. It has spawned worldwide travel bans, home quarantines with only essential and limited movement in communities and a complete lockdown of the American economy. It is predicted to be an economic tsunami, an event greater than the 1929 "Great Depression". The St. Louis Federal reserve has stated the unemployment rate could rise to over 32% and the country may already be in a recession. To this date approximately 49,963 Americans have been killed and over 869,000 hospitalized.

The recently passed CARES ACT Federal Stimulus Bill to help the U.S. economy in the immediacy is over 2 trillion dollars. It is predicted that several more components to this recovery bill will be needed possibly totaling 6 trillion dollars. The CARES ACT stimulus bill provides for economic relief, including direct payments to individuals, bans on evictions, and proposals for forbearance on loans and business loans to help small business get re-started when the economy opens again.

Of particular interest in this Bill are provisions for Americans with IRC retirement accounts to be allowed to withdraw up to $100,000 with no interest or tax due if it is paid back within 3 years into another IRC approved retirement account, another $100,000 can be borrowed with interest and paid back to the retirement account. The Bill further exempts RMDs (required minimum distributions) that would otherwise be due this tax year from retirement accounts from having to be paid. The following conditions must be met:

*Being diagnosed with Covid-19

*Having a spouse or dependent diagnosed with Covid-19

*Experiencing a layoff, furlough, reduction in hours or inability to work due to Covid-19 or lack of childcare due to Covid-19

This will be a welcomed and much needed benefit available to almost every American with a retirement account. However, the Retirees with DROP accounts converted under the HB3158 annuity cannot use these provisions.

The COVID-19 pandemic has placed the American economy in a tailspin. The Dallas Police and Fire Pension Fund, along with many other government institutions, will follow in that wake. The Dallas Police and Fire Pension Fund seized the retiree Drop funds in December 2016 when the Plan was 45% funded. The current funding level is not much higher at this time. It is hard to imagine that more changes would not be coming in the aftermath of this “economic tsunami”. What is clear however is the annuity “Hardship” provision will not be providing the type of relief that would have been available in the manner that the Retiree DROP funds had under the rules of the IRC prior to HB3158 involuntary annuity. It does not appear The Texas Supreme Court rulings regarding the Texas Constitutional Amendment 16:66 will be of help regarding withdrawal timing as decided in this case nor Prospective changes in interest earned on DROP funds as decided in the “Eddington” case which was heard on case # 17-0058.

The Board’s argument.

The Board has argued before this court that all that changed by seizing and converting the DROP funds is the “distribution timing” -- that retirees will receive all of their money in the form of a standard annuity with “interest” and a “hardship provision”. However, approval and receipt of a hardship distribution is illusive and carries strict requirements met by few to none.

Hardship Provisions

The Retirees in this case prior to by HB3158 had their retirement DROP accounts held under the rules of IRC 401. In regards to addressing “Hardship” this provided for rollover to 401k 457 /IRA accounts or lump sum payment. Retirees could make application for withdrawals by Tuesday at 5:00 p.m. on any week and the money would be in their accounts on Friday.

The involuntary annuity created by HB3158 cannot be rolled over or withdrawn by lump sum. It is simply monthly payments.

But for this involuntary annuity created by HB3158 these Retirees would be eligible for this relief in the CARES ACT stimulus bill to aid in Hardship relief.

The Policy now in effect under the HB3158:

From the DEFERRED RETIREMENT OPTION PLAN POLICY (DROP)

G. HARDSHIPS

1. Pursuant to the Plan, a DROP Annuitant who was a former Member of the Plan (a "Retiree Annuitant") may apply for a lump sum distribution relating to his or her DROP Annuity in the event that the Retiree Annuitant experiences a financial hardship that was not reasonably foreseeable. To qualify for an unforeseeable financial hardship distribution, a Retiree Annuitant (or the estate of a Retiree Annuitant in the case of subsection G.2.e.) must demonstrate that:

a. a severe financial hardship exists at the time of the application (i.e., not one that may occur sometime in the future);

b. the hardship cannot be relieved through any other financial means (i.e., compensation from insurance or other sources, monthly annuity benefits, or liquidation of personal assets) unless using those other sources would also cause a financial hardship; and

c. the amount requested in the application is reasonably related to and no greater than necessary to relieve the financial hardship.

3. DPFP staff will develop procedures relating to the application for an unforeseeable financial hardship distribution, which will include, at a minimum, a notarized statement by the applicant relating to the requirements for eligibility and documentation sufficient to demonstrate such eligibility. Following submission of the required financial hardship distribution application, the notarized statement, and other required documentation as stated in the application form, DPFP staff shall review the materials and inform the Retiree Annuitant within thirty (30) days whether any additional information or documentation is required or requested. Once all required and/or requested documentation has been submitted, the Retiree Annuitant shall be informed within thirty (30) days if (i) the Retiree Annuitant is eligible for an unforeseeable financial hardship distribution or (ii) the matter has been referred to the Board for consideration at the next regular meeting. After an unforeseeable financial hardship distribution has been made to a Retiree Annuitant, a Retiree Annuitant may not request an additional

unforeseeable financial hardship distribution for ninety (90) days from the date of distribution of any amount under this Section.

4. The Executive Director shall have the authority to approve an application for an unforeseeable financial hardship distribution. The Executive Director shall submit to the Board for final action by the Board any recommended denial, in whole or in part, of any request for an unforeseeable financial hardship distribution. Determinations of the Board and the Executive Director on applications for unforeseeable financial hardship distributions are final and binding.

As evidenced above, any "Hardship" claim must be submitted on a form, with notarized evidence stating there are no other available means to address this hardship. The application must include 6 months bank records, IRA's, 401k,457, stocks and bonds, Tax returns, and then it must be a hardship event recognized in the DROP Policy Addendum. All of this must then be approved by the "Executive Director" and the Board with a final decision and no right of appeal.

Interest Provision

The interest all Retirees received on their DROP accounts prior to HB3158 was 6%. After HB3158 that interest rate was reduced to what has been reported in this case to be 2.75%. This is only partially true. The published rate by the Board in September 2017 for the conversion of all the held DROP monies to annuity was as follows: 5year annuity 1.83%, 7year 2.08%, 10year 2.26%, 20year 2.59% and 30year 2.83%. The actual rate of a 26 year annuity was 2.69%. It is my belief that most of the balance of the DROP monies are held at far less than 2.75%.

Withdrawal-Distribution timing

The Retirees had the right to Lump Sum or Rollover withdrawal prior to HB3158.Under HB3158 the lifetime annuity occurred. The DROP monies would be distributed in equal payments over the projected life of the annuitant (Retiree). The Board's attorney expressed that changing the distribution timing did not reduce or impair in a constitutional sense.

This Court should Know All the Facts Before Deciding

The Board has Plead that Retirees never had a right to unfettered access that it was always subject to "Amendment" and "Efficient Administration".

What is never said is how the Board, the Plan Sponsor City of Dallas, and The Texas State Legislature all worked conjunctively to enable Retroactive effect of a Prospective Law. On December 5, 2016 the Mayor filed an unopposed Mandamus action to aid the Board in holding the money, On December 1, 2016 the City of Dallas Attorney issued a Legal "Memo" explaining Trustee protection and promise of indemnification in actions taken specifically in the refusal to release DROP money. The Board used the concept of the undefined terms in the "Plan

Document" "Efficient Administration" and "Plan Policy Amendment" and finally the Legislature passing HB3158 with it becoming Law on September 1, 2017 to hold Retiree Drop money to convert it to annuity. All of this combined allowed the Retroactive application of this law.

On December 8, 2016 the Board refused to pay DROP withdrawal requests. It was not a change in policy at all; it was a complete refusal to honor any of the requests for payment, in spite of having $729 million in cash equivalency accounts and at least $129 million available to pay on that day.

The January 12, 2017 DROP POLICY AMENDMENT made many "Retroactive" changes. In the January 2017 Plan Amendment, the Board nullified all previous requests for withdrawal that had been presented for payment at the December 8, 2016 Board meeting. The Board simply refused to honor them. The Board also cancelled all monthly draw requests that had been in effect and replaced it with a "one size fits all plan" that would begin in March 2017. The January 12, 2017 "DROP POLICY Amendment".

The amendment provided for a choice of two distribution plans and also a "Pro Rata" Lump sums being distributed beginning in March 31, 2017 based on what was described as "excess liquidity". This "Pro Rata" distribution was stated to be between 100 and 300 million dollars.

No Lump sum distributions were ever made under any of these policy changes, despite hundreds of millions being available. In fact, no lump sums under the terms of the Plan document or addendums were made from December 8, 2016 until the September 1, 2017 HB3158 going into effect and annuity conversion.

The Board prepaid bank loans of over 130 million dollars, they paid hundreds of thousands in executive bonuses and still, according to the SEGAL Consultants, they had 14.1% excess cash at the end of the fiscal period.

Many Retirees are of the opinion that the Board “Plan Policy Amendment of January 2017” was in fact a Plan Amendment by the Board. The Board had no authority to amend the plan. They believe the Board did not have the authority to change the withdrawal provisions or to nullify withdrawal requests. The Plan Document term “Efficient Administration” is undefined in the plan. The Board’s use of it to deny withdrawals from December 8th 2016 thru till September 1, 2017 is dubious at best. Retiree’s do not complain of the Texas Legislature’s right to change the pension law going forward, prospectively. What is complained here is the Retroactive application of that Prospective Legislation to the DROP monies held by the Board until such time as the Legislature passed and implemented a law to annuitize.

This was not a pension plan that was out of money and couldn’t pay. This was a pension plan that had hundreds of million available to pay and refused to pay.

The only remaining issue before this court is the “Takings Claim”.

This “taking” involves the Taking of Property without just Compensation.

It is a complex problem affecting thousands of retirees and a lot of money.

This case has already been well plead by the Appellant’s Attorney in this matter. The information provided below in this analysis is not an attempt to re-plead, it is simply a fresh look at an old issue

An analysis of the Taking’s issue.

The Texas Supreme Court ruling in the two questions certified before this court established the Retiree as the “Sole and Exclusive Owner of the DROP Funds”, and that with this was included the Bundle of Rights that accompany ownership of property. The "Takings Clause" of the U.S. Constitution states simply **"nor shall private property be taken for public use, without just compensation."**

In a review of takings jurisprudence courts seem to defer to a per se analysis in cases involving property other than land. In Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155 (1980), involving the ownership of accrued interest on interpleaded funds, the court found that the taking of interest on these funds amounted to a forced contribution to government revenues. In Brown v. Legal Foundation of Washington the courts also found that the State taking of the interest on IOLTA accounts to use for indigent legal services was a taking, having previously held that the interest belonged to the owner of the funds.

State courts have used the “per se” analysis in many significant cases including this case from Michigan, “AFT Michigan v. State, No. 303702, 2016 WL 3176812 (Mich. Ct. App. June 7, 2016)”.

The Scholar Michael B. Kent Jr. writes on this case:

> 2017 Public Pension Reform and the Takings Clause Michael B. Kent Jr.
>
> Campbell University School of Law, mkent@campbell.edu
>
> The Case for the Per Se Rule
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> “ By far the clearest application of the per se rule in the context of public employee benefits comes from a recent decision of the Michigan Court of Appeals. In AFT Michigan v. State, the court addressed the constitutionality of a statute that required all public school employees to contribute three percent of their salaries to a non-vesting retiree health benefit program. After concluding that the employees' salaries constituted "specific funds in which they unquestionably had a property interest," the court then found that the

> forced contribution to the retirement fund constituted a seizure of the employees' property. Citing to both Webb's and Brown, the court explained: "The law is ... clear that where the government ... asserts ownership of a specific and identifiable 'parcel' of money, it does implicate the Takings Clause. Indeed, the United States Supreme Court has termed such actions 'per se' violations of the Takings Clause." Put differently, by appropriating for its own benefit a portion of the employees' salaries, the state had triggered the per se rule and taken private property without compensation."

In general takings cases are mostly analyzed under these two theories:

"Per Se" Takings

Where the government requires an owner to suffer a permanent physical invasion of property, however minor, it must provide just compensation. Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982). This is so whether the invasion is by government itself or by a private person authorized by government. The second is Lucas-type "total regulatory taking". In Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992), the Court held that where regulations completely deprive an owner of "*all* economically beneficial use" of his property, the government must pay just compensation.

"Regulatory or ad hoc Takings"

In 1978, in Penn Central Transportation Co. v. New York City, 438 U.S. 104 (1978), the U.S. Supreme Court identified three factors as of particular significance in determining whether a taking had occurred. Of primary importance is "the economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations". In addition, the "character of the governmental action" – for instance whether it amounts to a physical invasion or merely affects property interests through "some public program adjusting the benefits and burdens of economic life to promote the common good" – may be relevant in discerning whether a taking has occurred.

The Case for a "Per Se" taking

This is a Lucas-type "total regulatory taking". In Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992), the Court held that where regulations completely deprive an owner of "*all* economically beneficial use" of his property, the government must pay just compensation.

From the Dissenting Opinion of the Texas Supreme Court Case #19-0234 regarding the Two Certified Questions from the 5th Circuit Court of Appeals.

"As the Court observes, allowing access only through monthly lifetime annuity payments does not diminish the amount of funds in the DROP accounts. Ante at ___. But it does diminish the value of the first responders' right to those funds. Everyone agrees the first responders are the exclusive owners of the funds in their DROP accounts. These funds are "accrued" benefits—those "that have been earned by service, not those that may be earned by future service." Eddington , ___ S.W.3d at ___, 2019 WL 1090799, at *4. As the exclusive owners of the funds, the first responders enjoy a "bundle of rights" that includes the right to possess, use, and transfer those funds as they may wish, and to exclude others from doing the same. Evanston Ins. Co. v. Legacy of Life, Inc. , 370 S.W.3d 377, 382–83 (Tex. 2012) ("Some of the key rights in American jurisprudence that make up the bundle of property rights include the rights to possess, use, transfer and exclude others.") (citing Kaiser Aetna v. United States , 444 U.S. 164, 176 (1979); United States v. Gen. Motor Corp. , 323 U.S. 373, 378 (1945)). Prior to the 2017 amendments, the first responders had the legal right to exercise that "bundle of rights" whenever they left active service. After the amendments, they may no longer exercise their bundle of rights as they see fit. Instead, the pension system enjoys the right to possess, use, and transfer the funds as it sees fit, so long as it does not reduce the total amount of those funds. The amendments diminished the value of the funds to those who actually own them, and thus "otherwise impaired" the benefits."

The Board has exerted total control and dominion over the Retiree's DROP Funds. The Board has taken the entire "corpus" of the DROP funds and whatever returns they may generate for its own use, giving to the Retiree a monthly check for their remaining life expectancy.

The second type of "Per Se" taking is where the government requires an owner to suffer a permanent physical invasion of property, however minor, it must provide just compensation. Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982).

In Brown v Washington Legal services the U.S. Supreme Court in the majority opinion by Justice Stevens wrote:

From page 235

Cite as: 538 U. S. 216 (2003)

Opinion of the Court

“Even the dissenters in the Court of Appeals did not disagree with the proposition that Penn Central forecloses the conclusion that there was a regulatory taking effected by the Washington IOLTA program. In their view, however, the proper focus was on the second step, the transfer of interest from the IOLTA account to the Foundation. It was this step that the dissenters likened to the kind of “per se” taking that occurred in Loretto v. Teleprompter Manhattan CATV Corp., 458 U. S. 419 (1982). We agree that a per se approach is more consistent with the reasoning in our Phillips opinion than Penn Central’s ad hoc analysis. As was made clear in Phillips, the interest earned in the IOLTA accounts “is the ‘private property’ of the owner of the principal.” 524 U. S., at 172. If this is so, the transfer of the interest to the Foundation here seems more akin to the occupation of a small amount of rooftop space in Loretto.”

So too it is in this case, the day before HB3158 took the Retiree Drop monies and then converted the Retiree DROP money to annuity the Retiree had complete control of their DROP money, they could withdraw some or all of it or leave it to generate 6% interest income in a tax deferred DROP account. The Board took the effective use of all of the “principal” and any “interest” or return it would generate for itself. The Retiree was paid between 1.83% and 2.89% interest based on his life expectancy and the appropriate government instrument yield rate and paid back their money based on their life expectancy.

Unlike in Loretto, this is not the occupation of a small amount of rooftop space, it is more akin to occupying the entire rooftop.

It is my belief that Appellant’s should prevail in this case as a “total regulatory taking”. I have completed the other analysis for the court should they wish to consider it in the alternative. It is my belief the Appellant's could prevail under this theory as well.

Why the Board is wrong.

The Appellee's Board has led this court away from the "Per Se" lens of analyzing this case and instead led this court to the deep cavern of "Regulatory/ ad hoc" takings analysis from which few Plaintiffs have prevailed. It is a turn in the wrong direction.

From the Appellee's Brief of 03/10/20

> "No per se taking".
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> "To qualify as a per se taking, the governmental action must either:(i)cause a "permanent physical invasion" of the claimant's property; or (ii) result in a complete deprivation of "all economically beneficial use of" the claimant's property. Lingle v. Chevron U.S.A. Inc. , 544 U.S. 528, 538 (2005). Appellants cannot satisfy this demanding standard. See Appellee's Br. 19-22. As Degan explains, HB 3158 "does not take away an accrued or granted annuity payment." Op. 14. Nor does it "affect the Retirees' non-DROP monthly pension annuity payments or the dollar amount of the funds previously credited to DROP."Id . And the statute "does not retroactively reverse lump-sum distributions already paid out under former law."Id .The statute simply "changes the method of withdrawal going forward by requiring the pension system to distribute all DROP funds with interest." Id. There is thus no permanent physical invasion or confiscation of the DROP accounts".
>
> Retirees complain of none of these things but the last. Retirees do not challenge that regular pension payments have been made, nor that DROP lump sums previously granted been reversed, and not that the dollar value of DROP funds

held in the accounts has been changed. What is complained of is the last item, what the Board says is "changes the method of withdrawal going forward by requiring the pension system to distribute all DROP funds with interest".

It is so much more. As written in the above paragraphs, the Texas Supreme Court dissenting opinion characterizes these DROP funds belonging to Retirees: "As the exclusive owners of the funds, the first responders enjoy a "bundle of rights" that includes the right to possess, use, and transfer those funds as they may wish, and to exclude others from doing the same". The Board has seized every aspect of these DROP funds and would ask others to believe that all that has changed is the withdrawal timing.

What appears clear from a review of IOLTA takings cases and State pension benefit cases is that a regulatory/ad hoc analysis is not necessary or appropriate in this type of non-land case. Both State and Federal Courts have appeared to have drawn a distinction between the investment backed expectations and character of the Government action of Regulatory/ad hoc "Penn Central" type cases and Per Se cases involving the government taking of money for public use as in the IOLTA cases and pension cases.

Hopefully, this court will see this and conduct its analysis under a "Per Se" standard.

The Court Must Weigh All The Interests in Deciding.

The "Evil to be remedied is greater than the Good to be accomplished". It is naive to believe that these cases are decided within a vacuum. There are always extrinsic factors and opinions on how these decisions will affect society as a whole that weigh into these court opinions. Such is the case here.

The concept of governmental action that adjusts “the benefits and burdens of economic life to promote the common good” is certainly a noble one. Here, in this instance it is presumably for the providing of pensions for retired “First Responders”. To save their pension plan. HB3158 relieved the plan sponsor, City of Dallas, of the obligation to obtain a pension obligation bond to properly fund its public pension plan. Within ten days of the passage of HB3158 the City of Dallas filed for a one billion dollar plus “transformational bond” package for parks, bridges and streets to be placed on the November 2017 ballot. This begs the question of who in fact is responsible for providing the financial support for “First Responder Public Pensions”. Under HB3158 Retiree’s DROP money is taken and converted to a low interest rate annuity under the premise that the Board will use that money while earning a projected 7.0% rate of return on the money. This money in effect will provide the money for future pension benefits. This small group of retiree’s are given the burden of carrying what should be the taxpayer’s duty to fund public pensions.

The excerpt from the Financial Controller of the City Of Dallas email:

Elizabeth Reich, City of Dallas, email of November 21, 2016.

“The total number of Active DROP accounts 1,122, total number of Retiree DROP accounts 1,945 Total number of all DROP accounts 3,067. The published reports have stated that the average DROP account balance was approximately $600,000.

The total amount seized was approximately $683M in Retiree DROP and $397M in Active DROP. The Total DROP Balance 1,079,739,256.23”.

This small group should not be asked to carry the burden that should be borne by society as a whole, or as in this case the taxpayers of the City of Dallas.

Common sense.

Solutions to funding this plan without seizing the "DROP" money had already been presented by Segal Actuary in a report on September 8, 2016. The plan provided for several different strategies of pension obligation bonds for funding, a complete repayment of all the DROP monies, a COLA, and a funding period of 40 years. This plan was fully vetted by the Dallas Police and Fire Pension Fund. Many other solutions are available. The City of Dallas fixed the "sister fund" in 2005, the Dallas Employee Retirement Fund, by pension obligation bonds. The City of Houston recently fixed a multi-billion dollar "hole" in its pension plans with a $1 billion pension bond. There are pension fixes that have been done all over the country. What has never been done anywhere is the seizing of years of pension payments to involuntarily convert to a low interest annuity to pay the future pensions of retirees and an "Equity Adjustment/Clawback" feature to strip away already paid interest and annual adjustments if needed in the future. The plan passed under HB3158. They won't find another plan like that.

The Texas State Constitution under Article 16.66: "(:f)

The political subdivision or subdivisions and the retirement system that finance benefits under the retirement system are jointly responsible for ensuring that benefits under this section are not reduced or otherwise impaired."

What is lacking and has been lacking all along is a commitment from the City of Dallas to properly and constitutionally fund the Dallas Police and Fire Pension Fund.

Damages.

The damages in this case are not trivial, but they can be simply calculated. The law requires that the party be placed in the pecuniary position that they would have been in had this taking not occurred. In this instance that would require the Retiree's Drop balance as of December 8, 2016 restored plus the 6% interest it would have earned each month until it is returned. The money paid on the HB3158 annuity is simply paid for the use of the money during this time. It does not mitigate what has been lost.

These DROP funds should be restored to Retirees in such a manner that they can be rolled over to IRA or 401k accounts to prevent an unnecessary tax event.

Conclusion

The COVID-19 pandemic has created an unprecedented need for financial relief. It is not a question of if these Retirees who have had their DROP accounts involuntarily converted to annuity will need help, but when and how much help will be needed. Retirees are seeing spouses, family members and loved losing jobs and experiencing devastating health issues and financial consequences due to the Covid-19 Pandemic event. Retirees saved their retirement monies in these DROP accounts to be able to provide for themselves, their families or any others they chose in the manner that they saw fit. The IRC gave DROP account holders this ability. The annuity created by the Board cannot be changed to allow this type of relief as provided under this CARES ACT stimulus bill or even relief as previously was available under the IRC and the Plan Document. The Hardship provisions under the HB3158 annuity provide only relief in the most dire circumstances, and then only with the approval of the Executive Director and the Board with no right of appeal. It is clear from the pleadings in this case that the Board has taken complete dominion and control over every aspect of the Retiree DROP money. The Texas Supreme Court in the dissenting opinion answering the two questions submitted before it in this case that the DROP money was the Sole and exclusive Property of the Retiree, and that this included the "Bundle of Rights" associated with ownership of property. A "Taking" has occurred here.

It is my hope that this court should find for the Appellant's, to rule otherwise would be a shift in the paradigm of takings jurisprudence. It would be a chilling blow to retirement savers of all types. People would be going back to saving money under their mattresses to protect themselves from seizure by governments thirsty for new revenue sources.

I am asking that this Court rule in favor of these Appellant's as expeditiously as possible to correct this wrong. The Covid-19 virus has created a great and immediate need for Retiree's to have access to this money for financial relief as soon as possible.

Respectfully submitted,

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