Lawsuit Claims Houston Misled Voters on $1B Pension Bonds.

Ex-housing official claims Nov. 7 ballot omitted key facts

Mayor Sylvester Turner misled voters into approving a $1 billion pension bond referendum last month, a new lawsuit alleges, claiming that city officials plan to use the bonds' passage to sidestep a voter-approved limit on the property tax revenue Houston can collect.

Turner's office flatly denied that reading of the Proposition A ballot language, calling the wording "boilerplate" and saying the city has not and will not sidestep the revenue cap as a result of the vote on the mayor's landmark pension reform package or any of the prior bond issuances that included the same phrasing.

A local businessman and former Houston housing department director, James Noteware, sued the city Friday in state district court, contesting the Nov. 7 election on the grounds that the ballot language was "materially misleading."

The full language, rather than the summary listed for voters on the ballot, stated that the taxes levied to repay the bonds would not be "limited by any provision of the city home rule charter limiting or otherwise restricting the city's combined ad valorem tax rates or combined revenues from all city operations."

The suit claims that phrasing means the taxes levied to pay for the bonds will be exempted from the 13-year-old revenue cap, which limits the annual growth of property tax revenue to the combined rates of inflation and population growth, or 4.5 percent, whichever is lower.

"Omitting the fact that the proposition created a billion-dollar exception to default limits on the city's taxing authority renders the proposition materially misleading and void," the suit states.

"If the intent is to have more flexibility to raise property tax revenues, they should have just come right out and asked for it," Noteware said Monday.

Turner's spokesman, Alan Bernstein, said that is not the city's intent. Moreover, he said, the city charter requires Houston to pay its debts first before allocating any funds to operations.

'Baseless bombs'

"The suit is factually and legally baseless and from a taxpayer policy viewpoint completely illogical, as disrupting the pension reform will cost taxpayers more money," Bernstein said. "There was never any intent to avoid the revenue cap nor are there any facts indicating that we would. It is easy to throw baseless bombs. The price of doing so for the plaintiff and his lawyer is far less than the harm he is trying to inflict on taxpayers."

The language in question simply is intended to assure potential bondholders that the city will meet its obligations, Bernstein said.

Benefit cuts at stake

Regardless of whether Turner intends to step outside the revenue cap, Noteware's attorney, Jerad Najvar, said, the phrasing of the ballot language would let a future mayor do so.

"I see why the mayor is saying, 'Don't worry, we're never going to use this,' but nonetheless it's there," Najvar said Monday. "If this election was valid, then this builds in the authority that the city did not have before to go around that revenue limitation. If the election is going to be challenged, it has to be done right now."

Noteware said he views the pension reform package as inadequate and would not be concerned if his lawsuit winds up scuttling the deal.

The legislation that enacted the reforms requires the city to send the bond proceeds to the police and municipal pension funds this spring. If it does not, up to $1.8 billion of the $2.8 billion in benefit cuts in the reform package will be rescinded, adding tens of millions of dollars in costs to the city budget overnight.

The pension bonds are scheduled to be sold this week in New York; Bernstein said as of Monday it did not appear that process would be disrupted by the lawsuit.

Najvar said selling the bonds when a judge may decide Houston lacks the authority to do so would be "the height of irresponsibility."

Voters tweaked the revenue limitation in 2006, allowing the city to raise an additional $90 million for public safety spending, but Houston exhausted that breathing room in 2014. With property values continuing to rise, the city has trimmed its tax rate each fall since then to avoid collecting more revenue than allowed.

City officials tweaked the cap in 2015 and 2016, invoking flooding disaster declarations to collect a combined $22 million in those two years on top of what the revenue limit otherwise would have dictated, in keeping with an exception clause in the cap's wording. City Council voted down Turner's attempt to do so again this fall after Hurricane Harvey.

Meant as incentive

The bonds are part of Turner's landmark pension reform plan, which recalculates the city's payments to erase a debt of more than $8 billion debt over three decades, cuts benefits by $2.8 billion and includes a mechanism to cap Houston's future pension costs.

Turner offered to issue the $1 billion in bonds as an incentive to get the police and municipal pension systems to agree to another round of benefit cuts and to bolster both plans' funding levels. The police plan would get $750 million of the bonds and the municipal fund would get $250 million.

Courts twice ruled the city had used misleading ballot language under Turner's predecessor, Annise Parker, in connection with elections in 2010 and 2015.

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