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[What Pension Rulings in Illinois and Oregon Could Mean for States.](#)

Twice in two weeks, courts struck down state attempts to cut pension benefits of state employees and retirees, a development that indicates just how hard it is for states to solve budget problems by slashing public pensions.

On Friday, the Illinois Supreme Court ruled that the state's 2013 pension legislation that raised the retirement age and reduced Cost-of-Living-Adjustments (COLAs) was unconstitutional. The court ruled similarly last year on a proposed change to the state's retiree health benefits, so observers expected the latest ruling. However, the situation puts Illinois, which already has the lowest credit rating of any state, on the verge of a rating downgrade if it can't solve its fiscal crisis and fix its $7 billion budget deficit.The court ruling has already resulted in Moody's downgrading Chicago's credit rating to junk status; the city's pension debt is a huge component of its financial problems.

In Oregon, the state's high court ruled on April 30 that its 2013 reduction to COLAs was unconstitutional. The court dismissed the state's argument that the cuts were necessary for the state to continue its essential services, an argument similar to the one Illinois offered.

"One important difference in all this is that Oregon doesn't have the explicit constitutional [pension] protection Illinois had," said Keith Brainard, research director for the National Association of State Retirement Officers. "But nevertheless Oregon's supreme court found that COLA reform did violate the contract protection those workers had."

Over the past several years, states have litigated scores of pension cuts with different results. In places like Colorado, Florida and Washington, courts upheld benefits changes. Elsewhere, like in Arizona, courts struck down such changes.

Experts say that last week's ruling leaves cash-strapped Illinois with little recourse except to take drastic action. Even before the ruling, Gov. Bruce Rauner proposed slashing current employees' retirement benefits in an effort to close his state's continual budget gaps. Rauner's proposal would allow current employees to keep the pensions they've already earned but future benefits would be less generous. He estimated the move would save $2.2 billion in 2016 alone. Key to his plan would be a voter referendum clarifying that the state's constitutional public pension benefit protection clause applies neither to future accruals nor to health insurance.

Changing the state constitution is extremely difficult, but for states that have been rejected by the courts or don't have a good track record, it may be the last available option, said Frank Shafroth, director of the Center for State and Local Government Leadership at George Mason University.

"These governors and legislatures are going to have to go to the people and say it's not adding up," said Shafroth, who is a Governing contributor. "Something's got to give here."

That may also be the case for New Jersey, which has pending litigation regarding its elimination of COLA benefits in 2011. Like Illinois, the state has struggled repeatedly with budget deficits and has neglected its pension funding requirements as a result. Without waiting for a ruling on the 2011 legislation, Gov. Chris Christie has proposed going even further. Earlier this year he said he wants to close down the plan entirely and move active public employees into a hybrid of a traditional pension plan and a 401(k)-like plan.

James Spiotto, a bankruptcy expert and co-publisher of the MuniNet Guide to municipal research, said the message the Oregon and Illinois rulings send is that states should avoid pension litigation at all costs. He pointed to the recent pension settlement in Rhode Island that changed COLA payments and ultimately reduced pensions payouts (although not as drastically as the initial legislation proposed). Litigation drags on for years and creates uncertainty, Spiotto said. In the case of Oregon, a negative ruling can create additional budget pressure as the state and its municipalities must pay more in pension contributions in future years than the pension fund forecast.

“It’s clear that in not just these cases but all of them that we’re far better off finding the solution and negotiating it rather than litigating it,” he said. “If you don’t fix it as a practical matter, then both sides lose.”

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