STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT
	)SS:	
COUNTY OF MARION	)	CAUSE NO. 49D11-9712-CP-1772

ROBERT MAHOWALD)
on behalf of himself and all others)
similarly situated,)
)
Plaintiffs)
)
v.)
)
THE STATE OF INDIANA)
)
Defendant)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case came before the Court on the Plaintiff's Complaint For Declaratory Judgment. The Parties were heard in person before the Court on May 20, 1998. Pursuant to Indiana Trial Rules 54 and 58, the Court, being duly advised in the premises, now enters its Findings of Fact and Conclusions of Law as a final appealable judgment as to all substantive issues in this matter.

FINDINGS OF FACT

1. Plaintiff's Complaint and Motion for Summary Judgment seeks to have declared Indiana Code Sections 2-3.5-4-1, et seq., unconstitutional for violation of the equal protection guarantees through the Privileges and Immunities Clause of the Indiana Constitution.
2. The defendant State responded to Plaintiff's Motion for Summary Judgment and, pursuant to Ind. T. R. 56(B), filed a Cross-Motion for Summary Judgment and requested this Court enter summary judgment in favor of the State on the merits.

3. The purported class would be retired legislators from the Assembly General of Indiana. Plaintiff Robert Mahowald seeks to act on their behalf. The Complaint purports to be brought as a class action, although no class has been certified as of this date.

4. In 1989, the General Assembly established the Legislators' Retirement System ("LRS"). The option to participate in the LRS is open to "each member of the General Assembly who: (1) is serving on April 30, 1989; and (2) files an election under IC 2-3.5-3-1(b)." Ind. Code § 2-3.5-4- 1.

5. Participants must be over the age of 65, must no longer be a member of the General Assembly, have at least ten years of service, or meet disability requirements, not currently receiving or entitled to receive compensation from the State for work in any capacity, and not be receiving or have received a reduced monthly retirement benefit under Ind. Code Section 2-3.5-3-4-4. Ind. Code. § 2-3.5-4-2.

6. The LRS consists of two distinct funds: the legislator's defined benefit plan and the legislators' defined contribution plan. Ind. Code § 2-3.5-3-2. The purpose of two plans is "to provide retirement, disability, and survivor benefits to members of the General Assembly". See Affidavit of James Sperlik, Exhibit A, 1997 Indiana Pension Handbook at 84.

7. The LRS plans are trusts that are "maintained for the purpose of paying benefits to participants and their beneficiaries and paying the costs associated with administering the plan. Ind. Code § 2-3.5-4-3. See also Affidavit of James Sperlik, Defendant's Motion for Summary Judgment, Exhibit A, 1997 Indiana Pension Handbook at 84.

8. The LRS defined benefit plan grants benefits to a legislator 65 years of age or older that equal the lesser of the following: (1) $40 multiplied by the number of years of service in the

General Assembly completed before November 8, 1989 or, (2) the highest consecutive three-year average annual salary attributable to the participant's service as a legislator. Ind. Code § 2-3.5-4-3.

9. The defined benefit plan applies to members of the General Assembly who (1) were serving as of April 30, 1989, and (2) file an election under Indiana Code Section 2-3.5-3-1(b). Ind. Code § 2-3.5-4-1.

10. Legislators who served only prior to April 30, 1989 may receive benefits through the PERF fund. Ind. Code § 2-3.5-1.

11. Legislators who served on April 30, 1989, may elect to receive benefits through PERF or through the newly enacted LRS, including both the defined benefit plan and the defined contribution plan. Ind. Code § 2-3.5-1-2.

12. Legislators who began service after April 30, 1989, may receive benefits only through the LRS defined contribution plan. Ind. Code § 2-3.5-1-3.

13. All conclusions of law set forth below which should have been denominated findings of fact are incorporated herein by reference.

CONCLUSIONS OF LAW

14. The parties have agreed that there are no genuine issues of material, disputed facts in this matter and that the constitutionality of the statute is the only issue. Ind.T.R. 56(c).

15. The Court now grants the State's Cross-Motion for Summary Judgment and denies Plaintiffs' Motion for Summary Judgment due to the constitutionality of the Statute at issue.

16. This Court is charged with upholding the constitutionality of a statute if there is any reasonable construction of the statute which will enable it to be read constitutionally.

17. Plaintiff has failed to carry his burden in overcoming this presumption of constitutionality; he has not clearly negated every reasonable basis that would support the legislatively created classification.

18. Because the statutes as enacted involve acceptable legislative "line drawing" that is reasonably related to the inherent characteristics that distinguish certain legislators from others, and because the benefit created is equally available to the entire class with those characteristics, the statutes are constitutional, and this Court grants summary judgment in favor of the Defendant and denies summary judgment to the Plaintiff.

19. In challenging the constitutionality of an Indiana statute, Plaintiffs face the highest of legal standards:

> Every statute stands before [the Court] clothed with the presumption of constitutionality until clearly overcome by a contrary showing .... The party challenging the constitutionality of the statute bears the burden of proof, and all doubts are resolved against that party.... If there are two reasonable interpretations of a statute, one of which is constitutional and the other is not, we will choose that path which permits upholding the statute because we will not presume that the legislature violated the constitution unless such is required by the unambiguous language of the statute.

Boehm v. Town of St. John, 675 N.E.2d 318, 321 (Ind. 1996) (internal citations omitted). See also Price v State, 622 N.E2d 954, 963 (Ind. 1993) ("Unconstitutional intention will not be attributed to the legislature if reasonably avoidable").

20. In giving due respect to the doctrine of distribution of powers found in the Article 3, section 1 of the Indiana Constitution, the judiciary is to afford the legislature "wide latitude in determining public policy" and should refrain from substituting its beliefs for those of the legislature in determining the wisdom or efficacy of a particular statute. Id., citing State v. Rendleman, 603 N.E.2d at 133, 134 (Ind. 1992).

21. "A statute is not unconstitutional simply because the court might consider it born of unwise, undesirable, or ineffectual policies." Rendleman, 603 N.E.2d at 1334. Thus, the court does not sit as a "supreme legislature." Bunker v. Nat'l Gypsum, 441 N.E.2d 8, 11 (Ind. 1982).

22. Specifically, in analyzing the constitutionality of a statute on a challenge under Article I, Section 23, "the court must accord considerable deference to the manner in which the legislature has balanced the competing interests involved." Collins v. Day, 644 N.E.2d 72, 79-80 (Ind. 1994). See also Indiana High School Athletic Association v. Carlberg, 694 N.E.2d 222, 248 (Ind. 1997).

23. To overcome the presumption of constitutionality under Article I, section 23, the Plaintiff bears the ponderous burden to "negate every conceivable basis which might have supported that classification." Collins v. Day, 644 N.E.2d at 79-80, citing Johnson v. St. Vincent Hospital, 404 N.E.2d, 585, 604 (Ind. 1980).

24. The Court grants the State's Summary Judgment because the statutes creating the LRS pass the test articulated in Collins, and because Plaintiff failed to carry his burden of proof.

25. Under the Indiana Supreme Court's analysis in Collins v. Day addressing Article I, Section 23, Indiana Code Sections 2-3.5-4-1 through 2-3.5-4-3 are constitutional. Collins v. Day, 644 N.E.2d 72, 79-80 (Ind. 1994). See also Indiana High School Athletic Association v. Carlberg, 694 N.E.2d 222 (Ind. 1997).

26. In 1994, the Indiana Supreme Court articulated the standard for review of a claim under the Privileges and Immunities Clause contained in Article I, Section 23 of the Indiana Constitution. Collins, supra. Recently, in IHSAA v. Carlberg, the Indiana Supreme Court underscored the sea change that the "watershed" case of Collins v. Day wrought in Indiana Privileges and Immunities analysis. Carlberg, 694 N.E.2d at 239.

27. In Collins, the Court rebuffed the notion that federal equal protection analysis should be imported into the arena of the Indiana Privileges and Immunities Clause. In abrogating an entire line of cases that held the state and federal standards similar, if not identical, the Court held that the state Privileges and Immunities Clause could enjoy an "independent standard" of analysis from that of the federal equal protection clause. Collins v. Day, 644 N.E.2d at 74-75.

28. The Supreme Court in Collins clarified that the analysis of Article I, Section 23, did not require "applying varying degrees of scrutiny for different protected interests," as required by federal equal protection analysis. Id at 80. Instead, the Court employed a two-pronged test for Indiana Privileges and Immunities analysis, adding a special focus on the deference owed by the judiciary to legislative classifications:

> First, the disparate treatment accorded by the legislation must be reasonably related to inherent characteristics which distinguish the unequally treated classes. Second, the preferential treatment must be uniformly applicable and equally available to all persons similarly situated. Finally, in determining whether a statute complies with or violates Section 23, courts must exercise substantial deference to legislative discretion.
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> Id. See also Carlberg, 694 N.E.2d 222, 239-40.

29. The first prong of the Collins test requires that the basis of the classification must "inhere in the subject matter." Collins, 644 N.E.2d at 78. Specifically, the legislative classification must have characteristics that "rationally distinguish the unequally treated class." Person v. State, 661 N.E.2d 587, 592 (Ind. Ct. App. 1996).

30. The second prong of the Collins test requires that the disparate treatment be "applied equally and evenly to all those within the classification." Id. at 593.

31. The statute creating the LRS pass the test articulated in Collins and are constitutional.

32. The statutes that make the LRS applicable only to those legislators who were serving on or later than April 30, 1989, are constitutional under the test articulated by the Indiana Supreme Court in Collins v. Day.

33. The General Assembly has discretion to create classifications based on fiscal concerns, particularly where the statute logically acts prospectively.

34. Any "classification" created by the General Assembly through defining the participants in the LRS is inherently related to the distinction between those legislators who were serving at or after the time of the passage of, and the voting on, the bill and those legislators who had served prior to the passage of the bill. In addition, the LRS is equally available and applicable to all legislators who served on April 30, 1989, or after that date.

35. Because of the statutes' recognition of inherent distinctions and its equal applicability, the statutes do not abridge the protections afforded by the Privileges and Immunities Clause of the Indiana Constitution, and this Court grants summary judgment in favor of the State.

36. The purpose of enacting the LRS was to create a separate retirement plan for state legislators. Handbook at 84.

37. In creating the LRS, the General Assembly of necessity had to define the applicability of the LRS, i.e., some "line drawing" by the General Assembly inheres in the process of creating such a new system within the state.

38. Although Plaintiff may disagree with the line that was drawn by the general Assembly in defining the applicability of the LRS, mere disagreement by the Plaintiff with the legislature's decision will not demonstrate a constitutional violation of the Privileges and Immunities Clause.

39. Any alleged "classification" of legislators created by Indiana Code Sections 2-3.5-4-1 through 2-3.5-4-3 is constitutional due to the distinctions inherent in the subject matter.

40. The Supreme Court has recognized the discretion the General Assembly enjoys in defining a particular class to which a statute will be applicable:

> Legislative classification becomes a judicial question only where the lines drawn appear arbitrary or manifestly unreasonable. So long as the classification is based upon substantial distinctions with reference to the subject matter, we will not substitute our judgment for that of the legislature; nor will we inquire into the legislative motives prompting such classification.
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> Chaffin v. Nicosia, 310 N.E. 2d 867, 869 (Ind. 1974).

41. If any set of facts exists that may be "reasonably supposed" to serve as a basis for the legislative classification, those facts are assumed to have been in existence at the time of enactment of the law. Sperry & Hutchinson Co. v. State, (1919), 1988 Ind. 173, 183, 122 N.E.2d 584, 587.

42. It may be reasonably supposed that the date through which the General Assembly defined participation in the LRS was a result of funding considerations.

43. In enacting the LRS, the General Assembly concerned itself with the fiscal impact of such a program.

44. Because the funds for supporting the LRS are to be appropriated from the State General Fund, Ind. Code § 2-3.5-5-8, the General Assembly directed actuaries for the fund to determine the impact such system would have on the state treasury. Sperlik Aff., Defendant's Motion for Summary Judgment, Exhibit B, Fiscal Impact Statement for H.B. 1958. See also Handbook at 89 (chart of costs and number of participants for the Legislators' Defined Benefit plan within the LRS).

45. The General Assembly confronted complex decisions to be made in creating a new retirement system, including choosing among various methods of funding the system. See

Handbook at 95-97 ("discussing the fundamentally different philosophies of paying for retirement benefits").

46. The Supreme Court has recognized fiscal considerations when reviewing the constitutionality of legislatively created classifications. See e.g., Carlberg at 240 (accepting high school's claim that fiscal considerations required classification).

47. The General Assembly also chose a specific date at which participation in the LRS would be triggered is but one of the many issues upon which the General Assembly passed in determining the financial viability of the new system.

48. That the General Assembly clearly deemed the selection of a single date for participation in the LRS necessary; that the operation of that date may appear "harsh. . . does not render it unconstitutional. . . in light of other policy considerations." Johnson, 682 N.E.2d at 831.

49. Under Plaintiff's theory, statutes could no longer be merely prospective; they would always include retroactive effect. Such requirement could not have been the purpose of Article I, Section 23.

50. Second, it may be reasonably supposed that the General Assembly chose the April 30, 1989, so that the new law would have only prospective affect.

51. The new system included later legislators and, at their option, legislators from the legislative session that passed the new law who had expended time, effort, and possibly, political capital in passing the new law.

52. The General Assembly that passed LRS took both the credit and the potential political fallout for creating a new LRS.

53. The LRS allowed the opportunity for participating legislators to opt to maintain their previous retirement benefits and eschew the defined contribution and benefit plans within

the LRS if they wished, permitting legislators to avoid political "fallout" for increasing their own pensions. See Ind. Code §§ 2-3.5-1-2; 2-3.5-4-1 (2).

54. The fact that legislators who had served prior to April 30, 1989, a date within the regular session of the 106th General Assembly of 1989, were not defined participants in the LRS is logical and of no legal consequence.

55. The April, 1989, legislators were within their discretion, not to be disturbed by this Court, to create a prospective new plan for current and future legislators and allow to remain in place the plan on which previous legislators had relied during their tenure. The previous legislators were aware of the pension plan available to them at the time of their service, and LRS did not upset any of those settled expectations.

56. Such legislative line-drawing, whether through choosing a specific time period for limitations on actions or creating eligibility standards, is not constitutionally proscribed. See, e.g., Steup v. Indiana Housing Fin. Auth., 402 N.E.2d 1215 (Ind. 1980) (upholding income cut-off for eligibility for housing assistance); Johnson v. Gupta, 682 N.E.2d 1190 (Ind. Ct. App. 1997) (upholding statute of limitations for medical malpractice claims); McIntosh v. Melroe Co., 682 N.E.2d 822 (Ind. Ct. App. 1997) (upholding ten-year statute of repose for Indiana Products Liability Act); American Legion Post # 113 v. State, 656 N.E.2d 11990 (Ind. Ct. App. 1995) (upholding proscriptions of certain types of gambling).

57. Plaintiff has failed to carry his burden of proof in challenging the constitutionality of the statutes. Plaintiff's complaint that he and other previous legislators whose service ended prior to April 30, 1989, do not gain a potential benefit from participation in the LRS is legally insufficient to overcome the strong presumption of constitutionality that is the starting point for this Court's review.

> There is no precise rule of reasonableness of classification, and the rule of inequality permits many practical inequalities. A classification having some

> reasonable basis is not to be condemned merely because it is not framed with such mathematical nicety as to include all within the reason of the classification and to exclude all others. Exact exclusion and inclusion is impractical in legislation.

Cincinnati H & D Ry. Co. v. McCullom (1915), 183 Ind. 556, 561, 109 N.E. 206, 208.

58. During his tenure as legislator, Plaintiff had available to him information regarding retirement benefits to which he was entitled; the General Assembly during Plaintiff's tenure, however, did not choose to create a new legislative retirement system for its members.

59. Although Plaintiff may differ in his view of the reasonableness or financial efficacy of the participation date selected by the General Assembly, such difference in views hardly negates "every conceivable basis which might have supported the classification." Collins v. Day, 644 N.E.2d at 597.

60. Because "the [P]laintiff has failed to carry the burden placed upon the challenger to negative every reasonable basis for the classification," Id. at 81-82, this Court holds that no violation of Article I, Section 23 has been demonstrated, and that the State prevails on the merits of this suit.

61. The General Assembly's enactment of Indiana Code Sections 2-3.5-4-1 et seq. is equally available and applicable to all legislators similarly situated, and thus it fulfills the requirements of the second prong of the Privileges and Immunities test as articulated in Collins. 644 N.E.2d at 80. Indiana Code Section 2-3.5-4-1 specifically provides that the chapter "applies to each member of the General Assembly" who served on April 30, 1989, and filed an election under Ind. Code Section 2-3.5-3-1 (b).

63. All participants in the LRS have equal opportunity to the benefits to which they are entitled. For example, the chapter makes clear that the PERF board, in administering the LRS, may not

> (A) Determine eligibility for benefits;
> (B) Compute rates of contribution; or
> (C) Compute benefits of participant's beneficiaries;
> in a manner that discriminates in favor of participants who are considered officers, supervisors, or highly compensated. . . .

Ind. Code § 2-3.5-3-3.

64. The State's Motion for Summary Judgment is granted because Plaintiff has not demonstrated that he is "similarly situated" as those legislators who served on or after April 30, 1989: His tenure as a legislator preceded the effective date of the LRS, and such legislative line-drawing is permissible. All legislators affected by the effective date of the LRS, however, are similarly situated and have equal access to the LRS. The 106th General Assembly found that Plaintiff is not similarly situated with those participants in the LRS, and Plaintiff has failed to prove otherwise.

65. Because of the statute's recognition of inherent distinctions and its equal applicability, the challenged statute and its subsections do not abridge the protections afforded by the Privileges and Immunities Clause of the Indiana Constitution. The Court now grants the State's Cross-Motion for Summary Judgment and denies the Plaintiff's motion for Summary Judgment.

66. Because the Court finds in favor of the Defendant on the merits of this matter, the Court does not reach the issue of certification of a class of plaintiffs.

67. Pursuant to Indiana Trial Rule 54, this judgment is final and appealable as to all parties and substantive issues.

68. The Court further finds that there is no just reason for delay in entering judgment in this matter in favor of the defendant State, and the court expressly directs that such judgment be entered this date.

69. All findings of fact set forth above which should have been denominated conclusions of law are incorporated herein by reference.

WHEREFORE, the Court now **GRANTS** the Defendant State's Motion for Summary Judgment and **DENIES** the Plaintiff's Motion for Summary Judgment as expressed in this final, appealable order above.

DATE JUL 15 1998

JUDGE JOHN L. PRICE

MARION SUPERIOR COURT

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