

Federal judge declares Illinois Sudan divestment bill unconstitutional

February 26, 2007 (PLANSPONSOR.com) – A federal judge in Illinois has thrown out as unconstitutional a 2005 Illinois law limiting pension investments and state banking business with Sudan-connected companies.

U.S. District Judge Matthew Kennelly of the U.S. District Court for the District Of Illinois ruled that the portions of the act that limit pension investments violated the federal government's right to regulate foreign commerce.

The law also imposed restrictions on the deposit of state funds in financial institutions whose customers have certain types of connections with Sudan - restrictions Kennelly likewise found unconstitutional because of their interference with the federal government's ability to conduct foreign affairs.

"The Illinois legislature acted with laudable motives, but the Act violates federal constitutional provisions that preclude the states from taking actions that interfere with the federal government's authority over foreign affairs and commerce with foreign countries," Kennelly declared. "The Court concludes that the Illinois Sudan Act's lack of flexibility, extended geographic reach, and impact on foreign entities interferes with the national government's conduct of foreign affairs."

Kennelly permanently barred Illinois officials from enforcing the Sudan law.

"These amendments have a substantive and direct impact on the national government's ability to carry out the flexible and measured approach to Sudanese relations that Congress and the president have created," Kennelly wrote. "These provisions sanction some conduct that the federal policy permits, and include no mechanism for adjustment in response to changing political conditions in Sudan."

Kennelly's ruling came in a challenge to the law by the National Foreign Trade Council (NFTC), eight Illinois municipal pension funds, and eight beneficiaries of public pension funds.

The portion of the law affecting pensions in the state amended the Illinois Pension Code to prohibit the fiduciary of any pension fund established under the code from investing in any entity unless the company managing the fund's assets certifies that:

- the fund managing company has not loaned to, invested in, or otherwise transferred any of the retirement system or pension fund's assets to a (Sudan-connected) entity any time after the effective date of the law, January 27, 2006;
- at least 60% of the retirement system or pension fund's assets are not invested in forbidden entities at any time more than twelve months after the effective date of the law, January 27, 2007; and
- the retirement system or pension fund's assets are not invested in forbidden entities at any time more than eighteen months after the effective date of this act, July 27, 2007.

However, Kennelly rejected the argument that the pension restrictions were also unconstitutional because of their interference with U.S. foreign policy.

"The amendment to the Illinois Pension Code merely prohibits state and municipal pension funds from investing in companies that do business with or in Sudan," Kennelly wrote. "The Court has been presented with no evidence suggesting that these pension funds' inability to purchase the securities of such companies would be in any way likely to affect their decision to do business in that country."

The case is National Foreign Trade Council Inc., vs. Alexi Giannoulas, Case No. 06 C 4251, decided February 23, 2007.

NFTC Applauds District Court Ruling in Illinois Sudan Sanctions Case

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Washington, DC - The National Foreign Trade Council (NFTC) released the following statement in response to today's ruling by the Federal District Court for the Northern District of Illinois to deem the Illinois "Act to End Terrorism and Atrocities in the Sudan" unconstitutional.

"We are very pleased that Judge Kennelly agreed with us that the Illinois Sudan Divestment Act is unconstitutional and has enjoined the state from enforcing it," said NFTC President Bill Reinsch. "The judge has written a lengthy opinion, and we will have to study it carefully before commenting in detail."

On August 7, 2006, the NFTC and eight boards of Illinois public employee pension funds filed a lawsuit (NFTC v. Topinka) in challenging the constitutionality of the Illinois Act. NFTC retained law firm Winston & Strawn, LLP, to litigate the case.

The NFTC lawsuit followed the precedent set in the U.S. Supreme Court's 2000 decision in Crosby v. NFTC, in which the Court struck down sanctions enacted by Massachusetts on Burma. In that decision the Court ruled that if the federal government has enacted sanctions on a country, state and local governments are preempted from imposing sanctions of their own.

As Reinsch stated when the lawsuit was filed in August, "NFTC supports the efforts of the Bush Administration to bring peace to Sudan and to end the brutality that has been occurring in Darfur," said Bill Reinsch, president of NFTC. "However, state sanctions, like those enacted by the state of Illinois, work at cross purposes with federal policy. That is why the Supreme Court ruled as it did in 2000 and why we brought suit under that precedent," said Reinsch.