No. 13-3790

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

MICHAEL W. UNDERWOOD, et al.,

Plaintiffs-Appellants,

v.

CITY OF CHICAGO, a Municipal Corporation, et al.,

Defendants-Appellees.

Appeal from the U.S. District Court for the
Northern District of Illinois, Eastern Division
No. 13 C 5689
The Honorable James F. Holderman, Judge Presiding

BRIEF OF DEFENDANT-APPELLEE
THE CITY OF CHICAGO

STEPHEN R. PATTON
Corporation Counsel
of the City of Chicago
BENNA RUTH SOLOMON
JANE ELINOR NOTZ
Deputy Corporation Counsel
MYRIAM ZRECZNY KASPER
Chief Assistant Corporation Counsel
SARA K. HORNSTRA
Assistant Corporation Counsel
30 N. LaSalle Street, Room 800
Chicago, Illinois 60602
(312) 744-7764

Richard J. Prendergast
Michael T. Layden
Lionel W. Weaver
RICHARD J. PRENDERGAST, LTD.
111 W. Washington St., Suite 1100
Chicago, Illinois 60602
(312) 641-0881

Additional counsel listed inside cover

Additional counsel

Joseph M. Gagliardo
Jennifer A. Naber
James J. Convery
LANER MUCHIN, LTD.
515 North State Street, Suite 2800
Chicago, Illinois 60654
(312) 467-9800

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 13-3790

Short Caption: Underwood, et al. v. City of Chicago

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

[ ] **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

City of Chicago

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Laner Muchin; Richard J. Prendergast, Ltd.; City of Chicago Corporation Counsel

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

Attorney's Signature: s/ Richard J. Prendergast Date: 10/22/14

Attorney's Printed Name: Richard J. Prendergast

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ____ **No** X

Address: Richard J. Prendergast, Ltd.
111 W. Washington St., Suite 1100, Chicago, Illinois 60602

Phone Number: (312) 641-0881 Fax Number: (312) 641-3562

E-Mail Address: rprendergast@rjpltd.com

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 13-3790

Short Caption: Underwood, et al. v. City of Chicago

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

[ ] **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

City of Chicago

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Laner Muchin; Richard J. Prendergast, Ltd.; City of Chicago Corporation Counsel

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

Attorney's Signature: s/ Michael T. Layden Date: 10/22/14

Attorney's Printed Name: Michael T. Layden

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ____ **No** X

Address: Richard J. Prendergast, Ltd.
111 W. Washington St., Suite 1100, Chicago, Illinois 60602

Phone Number: (312) 641-0881 Fax Number: (312) 641-3562

E-Mail Address: mlayden@rjpltd.com

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 13-3790

Short Caption: Underwood, et al. v. City of Chicago

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

[ ] **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

City of Chicago

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Laner Muchin; Richard J. Prendergast, Ltd.; City of Chicago Corporation Counsel

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

Attorney's Signature: s/ Lionel W. Weaver Date: 10/22/14

Attorney's Printed Name: Lionel W. Weaver

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ____ **No** X

Address: Richard J. Prendergast, Ltd.
111 W. Washington St., Suite 1100, Chicago, Illinois 60602

Phone Number: (312) 641-0881 Fax Number: (312) 641-3562

E-Mail Address: lweaver@rjpltd.com

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 13-3790

Short Caption: Underwood, et al. v. City of Chicago

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

[ ] **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

City of Chicago

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Laner Muchin, Ltd.; Richard J. Prendergast, Ltd.; City of Chicago Corporation Counsel

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

Attorney's Signature: s/ Joseph M. Gagliardo Date: 10/22/14

Attorney's Printed Name: Joseph M. Gagliardo

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ____ **No** X

Address: Laner Muchin, Ltd.
515 North State Street, Suite 2800, Chicago, Illinois 60654

Phone Number: (312) 467-9800 Fax Number: (312) 467-9479

E-Mail Address: jgagliardo@lanermuchin.com

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 13-3790

Short Caption: Underwood, et al. v. City of Chicago

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

[ ] **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

City of Chicago

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Laner Muchin, Ltd.; Richard J. Prendergast, Ltd.; City of Chicago Corporation Counsel

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

Attorney's Signature: s/ Jennifer A. Naber Date: 10/22/14

Attorney's Printed Name: Jennifer A. Naber

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ______ **No** X

Address: Laner Muchin, Ltd.
515 North State Street, Suite 2800, Chicago, Illinois 60654

Phone Number: (312) 467-9800 Fax Number: (312) 467-9479

E-Mail Address: jnaber@lanermuchin.com

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 13-3790

Short Caption: Underwood, et al. v. City of Chicago

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

[ ] **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

City of Chicago

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Laner Muchin, Ltd.; Richard J. Prendergast, Ltd.; City of Chicago Corporation Counsel

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

Attorney's Signature: s/ James J. Convery Date: 10/22/14

Attorney's Printed Name: James J. Convery

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ____ **No** X

Address: Laner Muchin, Ltd.
515 North State Street, Suite 2800, Chicago, Illinois 60654

Phone Number: (312) 467-9800 Fax Number: (312) 467-9479

E-Mail Address: jconvery@lanermuchin.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

JURISDICTIONAL STATEMENT 1

ISSUES PRESENTED 2

STATEMENT OF THE CASE 2

A. The Initial Pension Code Amendments. 2

B. The Korshak Litigation And Initial Settlement. 5

C. The Settlement Extensions And Ultimate Expiration Of All Settlement Obligations. 6

D. Proceedings In This Case. 10

SUMMARY OF ARGUMENT 13

ARGUMENT 15

I. THE DISTRICT COURT CORRECTLY DISMISSED PLAINTIFFS' PENSION CLAUSE CLAIM. 16

A. The City Has No Legal Obligation To Provide Or Subsidize Retiree Health Care On A Lifetime Basis. 17

B. None Of Plaintiffs' Theories Establishes An Obligation By The City To Provide Or Subsidize Retiree Health Care For Life. 20

1. Plaintiffs' reliance on a presumption of vesting misses the point. 21

2. Plaintiffs' contention that the General Assembly cannot define the scope of the benefits it provides is incorrect as a matter of law. 23

3. Plaintiffs' contention that the district court concluded that the Pension Clause protects only those benefits in place as of 1970 is irrelevant and incorrect. 26

II. THE DISTRICT COURT CORRECTLY DISMISSED PLAINTIFFS' BREACH OF CONTRACT AND EQUITABLE ESTOPPEL CLAIMS.. 27

A. Plaintiffs Failed To State A Claim For Breach Of Contract. 27

1. Plaintiffs have no claim under the Pension Clause and as a result no contract claim either. 27

2. Plaintiffs have no common-law contract claim. 28

B. Plaintiffs Failed To State A Claim For Equitable Estoppel. 33

C. Plaintiffs' Assertions Of Collateral Estoppel And Claim "Revival" Are Meritless. 36

III. THE DISTRICT COURT CORRECTLY DISMISSED PLAINTIFFS' SECTION 1983 AND CONSTITUTIONAL CLAIMS. 37

CONCLUSION 40

TABLE OF AUTHORITIES

CASES **PAGE(S)**

Arazie v. Mullane,
2 F.3d 1456 (7th Cir. 1993) 16

Ashcroft v. Iqbal,
556 U.S. 662 (2009) 28

Bell Atlantic Corp. v. Twombly,
550 U.S. 544 (2007) 28

Berwick Grain Co., Inc. v. Illinois Department of Agriculture,
116 F.3d 231 (7th Cir. 1997) 33

Bower v. Jones,
978 F.2d 1004 (7th Cir. 1992) 31

Board of Regents v. Roth,
408 U.S. 564 (1972) 38

Buddell v. Board of Trustees, State University Retirement System of Illinois,
514 N.E.2d 184 (Ill. 1987) 19

Catlett v. Novak,
506 N.E.2d 586 (Ill. 1987) 36

Commonwealth Insurance Co. v. Titan Tire Corp.,
398 F.3d 879 (7th Cir. 2004) 16, 37

Council 31 of the American Federation of State, County and Municipal Employees, AFL-CIO v. Quinn,
680 F.3d 875 (7th Cir. 2012) 39

Crusius v. Illinois Gaming Board,
837 N.E.2d 88 (Ill. 2005) 25

Dobosz v. State Farm Fire & Casualty Co.,
458 N.E.2d 611 (Ill. App. Ct. 1983) 31, 32

Eschbach v. McHenry Police Pension Board,
977 N.E.2d 308 (Ill. 2005) 18

Evans v. Fluor Distribution Companies, Inc.,
799 F.2d 364 (7th Cir. 1986) 30

Felt v. Board of Trustees of the Judges Retirement System,
481 N.E.2d 698 (Ill. 1985) 19

Fields v. Elected Officials' Retirement Plan,
320 P.3d 1160 (Ariz. 2014) 22, 23

Halleck v. County of Cook,
637 N.E.2d 1110 (Ill. App. Ct. 1994) 34

Hickey v. O'Bannon,
287 F.3d 656 (7th Cir. 2002) 16

In re Petition for Detachment of Land from Morrison Community Hospital,
741 N.E.2d 683 (Ill. App. Ct. 2000) 23

Kalush v. Deluxe Corp.,
171 F.3d 489 (7th Cir. 1993) 36

Kanerva v. Weems,
13 N.E.3d 1228 (Ill. 2014) .... passim

Kaufman, Litwin and Feinstein v. Edgar,
704 N.E.2d 756 (Ill. App. Ct. 1988) 23

Kraus v. Board of Trustees of the Police Pension Fund,
390 N.E.2d 1281 (Ill. App. Ct. 1979) 19

Mapes v. Kalva Corp.,
386 N.E.2d 148 (Ill. App. Ct. 1979) 32, 33

Marconi v. City of Joliet,
989 N.E.2d 722 (Ill. App. Ct. 2013) 21

Marcus & Millichap Investment Services of Chicago, Inc. v. Sekulovski, 639 F.3d 301 (7th Cir. 2011) 16, 20, 37

Matthews v. Chicago Transit Authority,
9 N.E.3d 1163 (Ill. App. Ct. 2014) 21

McInerney v. Charter Golf, Inc.,
680 N.E.2d 1347 (Ill. 1997) 29

Milligan v. Board of Trustees of Southern Illinois University,
686 F.3d 368 (7th Cir. 2012) 24, 30

Moore v. Muncie Police and Fire Merit Commission,
312 F.3d 322 (7th Cir. 2002) 38

Morgan Place of Chicago v. City of Chicago,
975 N.E.2d 187 (Ill. App. Ct. 2012) 34

Payne v. Churchich,
161 F.3d 1030 (7th Cir. 1998) 16

Patrick Engineering, Inc. v. City of Naperville,
976 N.E.2d 318 (Ill. 2012) 34, 35

Podolsky v. Alma Energy Corp.,
143 F.3d 364 (7th Cir. 1998) 32

Rhoads v. Board of Trustees of the City of Calumet City Policemen's Pension Fund,
689 N.E.2d 266 (Ill. App. Ct. 1997) 18

Stenger v. Germanos,
639 N.E.2d 179 (Ill. App. Ct. 1994) 23

Teamsters Local Union No. 705 v. Burlington Northern Santa Fe, LLC,
741 F.3d 819 (7th Cir. 2014) 16

United States v. Burke,
781 F.2d 1234 (7th Cir. 1985) 33

Washington v. Parkinson,
737 F.3d 470 (7th Cir. 2013) 30

Williams v. Dieball,
724 F.3d 957 (7th Cir. 2013) 22

CONSTITUTIONAL PROVISIONS

U.S. Const. art. I, § 10, cl. 1. .... 11, 37

Ill. Const. 1970, art. XIII, § 5 .... passim

STATUTES

Ill. Rev. Stat. 1985, ch. 108½, ¶ 8-164.1 4

Ill. Rev. Stat. 1985, ch. 108½, ¶ 11-160.1 4

42 U.S.C. § 1983 (2012) 11, 37

40 ILCS 5/5-167.5 .... passim

40 ILCS 5/6-164.2 .... passim

40 ILCS 5/8-164.1 .... passim

40 ILCS 5/11-160.1 .... passim

740 ILCS 80/1 29

RULES

Fed. R. App. P. 10 33

Fed. R. Civ. P. 8 .... 28, 37

Fed. R. Civ. P. 12 .... 1, 11

Ill. Sup. Ct. R. 20 39

JURISDICTIONAL STATEMENT

The jurisdictional statement of plaintiffs-appellants Michael W. Underwood, et al., is not complete and correct. On July 23, 2013, plaintiffs filed a five-count complaint, styled as a class action, in the Circuit Court of Cook County. R. 1-1 at 8. Counts I-III asserted claims under Illinois law, *id.* at 35-36, and counts IV-V asserted federal claims, alleging a deprivation of property in violation of the Fourteenth Amendment and a violation of the Contracts Clause of the United States Constitution, *id.* at 37-38. On August 9, 2013, the City removed the action to the district court pursuant to 28 U.S.C. §§ 1441 and 1446. R. 1. The district court had jurisdiction over the federal claims pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) (2012), and over the state-law claims pursuant to 28 U.S.C. § 1367 (2012).

On December 13, 2013, the district court, pursuant to Fed. R. Civ. P. 12(b)(6), dismissed plaintiffs' action in its entirety and entered final judgment. R. 59 at 34-35, Appellants' Amended Opening Brief App. A34-A35; R. 60, A36.[1] Plaintiffs filed a notice of appeal the same day, which was timely under Fed. R. App. P. 4. This court has jurisdiction over plaintiffs' appeal from the district court's final judgment pursuant to 28 U.S.C. § 1291 (2012).

[1] Hereafter, we cite plaintiffs' opening brief as Plaintiffs' Br. _; their attached short appendix as A_; and their separate appendix as Sep. App. A_.

ISSUES PRESENTED

1. Whether dismissal of plaintiffs' claim under the Pension Clause of the Illinois Constitution should be affirmed on the ground that plaintiffs do not have a right to lifetime health care coverage provided or subsidized by the City, and thus the right plaintiffs seek to protect never existed.

2. Whether dismissal of plaintiffs' breach of contract claim should be affirmed because plaintiffs do not have a contractual right to lifetime health care coverage provided or subsidized by the City, and the claim is barred by the Illinois Statute of Frauds.

3. Whether dismissal of plaintiffs' claim for equitable estoppel should be affirmed because the amended complaint alleges no facts to show an affirmative act by the City itself or by an official with express authority to bind the City, and no facts to show detrimental and reasonable reliance.

4. Whether dismissal of plaintiffs' federal claims for deprivation of property and impairment of contract should be affirmed on the ground that plaintiffs do not have a contractual or property right to lifetime health care coverage provided or subsidized by the City.

STATEMENT OF THE CASE

A. The Initial Pension Code Amendments.

There are four pension funds for employees of the City of Chicago: (i) the Policemen's Annuity and Benefit Fund ("Police"); (ii) the Firemen's Annuity and Benefit Fund ("Fire"); (iii) the Municipal Employees' Annuity and Benefit Fund

("Municipal"); and (iv) the Laborers' and Retirement Board Employees' Annuity and Benefit Fund ("Laborers") (collectively, the "Pension Funds"). R. 55 ¶ 17. Plaintiffs acknowledge that the Pension Funds are each separate and independent legal entities created under the Illinois Pension Code. *Id.* ¶¶ 17-18.

In 1983, the General Assembly amended the Pension Code to require that the Police and Fire Pension Funds contract with one or more insurance carriers to provide group health care coverage for their retirees. R. 55 ¶ 27; *see also* 40 ILCS 5/5-167.5; 40 ILCS 5/6-164.2 (added by P.A. 82-1044, § 1, eff. Jan. 12, 1983). The amendments also authorized these Funds to pay the premiums for such health insurance with funds derived in part from the tax levy that provided a portion of the revenue used for the Funds, and in part from the retirees themselves. Specifically, up to $55 per month for retirees not eligible for Medicare and up to $21 per month for Medicare-eligible retirees was contributed from the tax levy and, if that did not cover a retiree's health care premium, the Pension Funds were to deduct the additional cost from the retiree's monthly pension payment. R. 55 ¶ 33; *see also* 40 ILCS 5/5-167.5(d); 40 ILCS 5/6-164.2(d). Nothing in the amendments required the City to provide or pay for retiree health care.

In 1985, the General Assembly amended the Pension Code to require the other two Pension Funds, Municipal and Laborers, to pay up to $25 per month for the health care of retirees age sixty-five and older who had at least fifteen years of service. R. 55 ¶ 36; *see also* 40 ILCS 5/8-164.1 (added by P.A. 84-23, § 1, eff. July 18, 1985); 40 ILCS 5/11-160.1 (added by P.A. 84-159, § 1, eff. Aug. 16, 1985). These

amendments did not require the Municipal and Laborers Funds to contract with an insurance carrier to provide group health insurance, but instead directed these Funds to "approve" a group health insurance plan for their retirees. R. 55 ¶ 36. The amendments also required retirees to pay the cost of premiums above the amount paid by their respective Pension Fund. *Id.*; *see also* Ill. Rev. Stat. 1985, ch. 108½, ¶¶ 8-164.1, 11-160.1; P.A. 84-23.[2] Again, nothing in the 1985 amendments required the City to provide or pay for retiree health care.

According to plaintiffs' amended complaint, in approximately 1984, the City prepared and distributed a booklet that advised retirees of their rights and benefits, and included the terms of the retiree health care plan. R. 55 ¶ 44. The amended complaint does not allege that this unidentified pamphlet represented that retirees would receive health care coverage for life. Plaintiffs further alleged that between 1984 and 1987, some City employees attended "Pre-Retirement Seminars" at which the benefits available upon retirement, including health care benefits, were discussed. *Id.* ¶ 45. In addition, certain City employees were allegedly advised that they would be able to "participate in the health plan for life . . . at no cost" for their individual coverage, and that it became "widely understood" by City employees that they "could rely on" having subsidized fixed-rate health care coverage for life. *Id.* ¶¶ 47-48. The amended complaint does not identify who made these statements, what positions these individuals held, whether the individuals were authorized to

[2] The 1985 amendments included the following disclaimer: "[t]he group coverage plans described in this Section are not and shall not be construed to be pension or retirement benefits for purposes of Section 5 of Article XIII of the Illinois Constitution of 1970." Ill. Rev. Stat. ch. 108½, ¶¶ 8-164.1, 11-160.1; P.A. 84-23.

make such statements, or how these unspecified statements purportedly became "widely understood" by City employees. As the district court observed in dismissing the amended complaint, "despite the fact that the intervening twenty-five years should have allowed a sufficient opportunity for investigation, plaintiffs still cannot identify any City officials who purportedly possessed the requisite express authority to bind the City." A31-A32.

B. The Korshak Litigation And Initial Settlement.

In 1987, following unsuccessful attempts by the City to enforce the Pension Funds' obligation under the Pension Code to deduct from retirees' pension payments the costs that exceeded the Pension Funds' subsidies, the City notified the Pension Funds that it intended to terminate retiree health care by the beginning of 1988. R. 55 ¶ 89. The City also filed suit in the Circuit Court of Cook County, seeking a judicial declaration that it had no obligation to provide health care benefits to retirees (*City of Chicago v. Korshak*, No. 87 CH 10134, Circuit Court of Cook County) (the "Korshak litigation"). R. 55 ¶ 91. A group of retirees successfully moved to intervene in the Korshak litigation, and a class of those who retired on or before December 31, 1987 was certified (the "Korshak sub-class"). *Id.* ¶ 92.

The issues in the Korshak litigation were never judicially resolved. Rather, in 1988, the parties entered into a settlement agreement, which was subsequently approved by the court. R. 55 ¶ 96. The settlement obligations were then codified through amendments to the existing provisions of the Pension Code. 40 ILCS 5/5-167.5(d); 40 ILCS 5/6-164.2(d); 40 ILCS 5/8-164.1(d); 40 ILCS 5/11-160.1(d) (as

amended by P.A. 86-273, § 1, eff. Aug. 23, 1989).[3] Specifically, the amendments increased the amount the Pension Funds were obligated to pay monthly for retiree health care (up to $65 for non-Medicare-eligible retirees and up to $35 for Medicare-eligible retirees). *Id.* The amendments also required the City, for the first time, to pay a portion (50%) of retiree health care, and obligated retirees to pay the costs in excess of the City's payments and the Pension Fund's contributions. 40 ILCS 5/5-167.5(c); 40 ILCS 5/6-164.2(c); 40 ILCS 5/8-164.1(c); 40 ILCS 5/11-160.1(c). The amendments stated that the obligations of the City and the Pension Funds would terminate on December 31, 1997. 40 ILCS 5/5-167.5(d), (e); 40 ILCS 5/6-164.2(d), (e); 40 ILCS 5/8-164.1(d), (e); 40 ILCS 5/11-160.1(d), (e).[4]

C. The Settlement Extensions And Ultimate Expiration Of All Settlement Obligations.

In June 1997, before the expiration of the initial settlement period, the parties to the Korshak litigation entered into a new settlement agreement, extending the settlement period through June 30, 2002. R. 55 ¶ 11. This agreement was also codified through amendments to the Pension Code. 40 ILCS 5/5-167.5; 40 ILCS 5/6-164.2; 40 ILCS 5/8-164.1; 40 ILCS 5/11-160.1 (as amended by

---

[3] To account for the passage of time, the court subsequently certified a class of employees who retired after December 31, 1987 (the cut-off date for the Korshak sub-class), but before August 23, 1989, which was the effective date of the 1989 Pension Code amendments (the "Window sub-class").

[4] Like the 1985 amendments, these amendments included the disclaimer that the health care plans should not be construed to be pension or retirement benefits within the meaning of the Pension Clause. 40 ILCS 5/5-167.5(f); 40 ILCS 5/6-164.2(f); 40 ILCS 5/8-164.1(f); 40 ILCS 5/11-160.1(f) (as amended by P.A. 86-273, § 1, eff. Aug. 23, 1989).

P.A. 90-32, § 5, eff. June 27, 1997). These amendments increased the Pension Funds' required monthly payment (up to $75 for non-Medicare-eligible retirees and up to $45 for Medicare-eligible retirees), and again required the City to pay 50% of retirees' health care costs. 40 ILCS 5/5-167.5(c), (d); 40 ILCS 5/6-164.2(c), (d); 40 ILCS 5/8-164.1(c), (d); 40 ILCS 5/11-160.1(c), (d). Additionally, the amendments expressly provided that the obligations of the City and the Pension Funds would terminate on June 30, 2002. 40 ILCS 5/5-167.5(d), (e); 40 ILCS 5/6-164.2(d), (e); 40 ILCS 5/8-164.1(d), (e); 40 ILCS 5/11-160.1(d), (e).[5]

In April 2003, the parties entered into another settlement agreement, under which the City again agreed to pay for a portion of retirees' health care coverage, but only until June 30, 2013, R. 34-6 at 7, and the Pension Code was again amended, 40 ILCS 5/5-167.5(b); 40 ILCS 5/6-164.2(b); 40 ILCS 5/8-164.1(b); 40 ILCS 5/11-160.1(b) (as amended by P.A. 93-42, § 5, eff. July 1, 2003). These amendments provided that the Pension Funds would make contributions (until June 30, 2013) in set amounts to the City for each retiree participating in a City health care plan. *Id.*[6]

---

[5] The amendments again provided the disclaimer that the health care plans should not be construed to be pension or retirement benefits within the meaning of the Pension Clause. 40 ILCS 5/5-167.5(f); 40 ILCS 5/6-164.2(f); 40 ILCS 5/8-164.1(f); 40 ILCS 5/11-160.1(f) (as amended by P.A. 90-32, § 5, eff. June 27, 1997).

[6] Specifically, the 2003 amendments required the Pension Funds to make the following monthly payments: (i) $85 for non-Medicare-eligible retirees and $55 for Medicare-eligible retirees from July 1, 2003 through June 30, 2008; and (ii) $95 for non-Medicare-eligible retirees and $65 for Medicare-eligible retirees from July 1, 2008 through June 30, 2013. 40 ILCS 5/5-167.5(b); 40 ILCS 5/6-164.2(b); 40 ILCS 5/8-164.1(b); 40 ILCS 5/11-160.1(b) (as amended by P.A. 93-42, § 5, eff. July 1, 2003). And again, the amendments included the disclaimer that the health care plans should not be construed as pension or retirement benefits within the meaning

The 2003 settlement also created the Retiree Healthcare Benefits Commission ("RHBC"), an independent commission that included labor union representatives and academic scholars from leading universities. R. 34-1 at 8. The RHBC was directed to study the City's existing funding of retiree health care benefits, and to recommend appropriate changes, following the expiration of the 2003 Korshak Settlement Agreement. *Id.* at 5. After analyzing the City's spending on retiree health care benefits, projections that those obligations were expected to triple to more than $300 million per year by 2019, the City's financial circumstances, industry trends, and market conditions, the RHBC found that "continuing the existing financial arrangement is not a viable course of action." *Id.* at 32. It explained that, "with an increasing retiree population, early retirement ages, and longer life spans, the ability of the City to provide benefits to its retirees on the same basis that they are provided today would appear to be untenable." *Id.* The RHBC concluded that "continued funding on the same basis would also likely result in other financial consequences as the significant change in long-term liability will likely affect both the City's bond rating and its creditworthiness." *Id.*

Based on the RHBC's findings and recommendations, and the concerns expressed by retirees, employee representatives, and industry experts, the City determined that it would gradually reduce, and by 2017, end its subsidy of health care benefits for retirees other than those in the Korshak and Window sub-classes. In a May 15, 2013 letter, the City advised retirees that it would voluntarily extend

---

of the Pension Clause. 40 ILCS 5/5-167.5(c); 40 ILCS 5/6-164.2(c); 40 ILCS 5/8-164.1(c); 40 ILCS 5/11-160.1(c) (as amended by P.A. 93-42, § 5, eff. July 1, 2003).

coverage and benefit levels through December 31, 2013. R. 19-1. In addition, the City would provide a health care plan to the Korshak and Window sub-classes, and pay up to 55% of the cost for that plan, for the lifetime of those retirees. *Id.* For those who retired on or after August 23, 1989, the City would make changes to their then-existing health care plan, including adjusting premiums and deductibles and modifying benefits, and ultimately would phase out that plan by the beginning of 2017. *Id.*

The May 15, 2013 letter also explained that retirees who are eligible for Medicare will continue to receive Medicare coverage and those non-Medicare eligible retirees who retired or will retire after August 23, 1989, will have a broad range of healthcare options available to them, as the Illinois health insurance exchange goes into effect in 2014. R. 19-1. The RHBC's Report estimated that many retirees will pay less than they were paying under the City's plan, and found that "the [federal exchange] subsidies are far more progressive, providing greater assistance to [retirees] with the greatest need." R. 34-1 at 29.

The obligations of the City and the Pension Funds to subsidize retiree health care pursuant to the 2003 settlement terminated on June 30, 2013. R. 55 ¶ 97. And as announced in its May 15, 2013 letter, the City commenced a three-year reduction in the prior City subsidies of retiree health care for those who retired on or after August 23, 1989 (*i.e.*, retirees other than those in the Korshak and Window sub-classes) starting on January 1, 2014.

D. Proceedings In This Case.

In July 2013, plaintiffs' counsel filed a motion in the Circuit Court of Cook County to "revive" the Korshak litigation. R. 55 ¶ 4. The court denied the motion, noting that plaintiffs would instead have to file a new action. *Id.* On July 23, 2013, plaintiffs filed a new action in the circuit court, and the City removed the action to the district court on August 9, 2013. R. 1. Plaintiffs subsequently requested and were granted leave to file an amended complaint. R. 13. Plaintiffs also filed a motion for class certification on September 17, 2013, R. 15, and a motion for preliminary injunctive relief on October 1, 2013, R. 19.

Plaintiffs' amended complaint, which was filed on December 9, 2013, R. 55; A1 n.1, identified four putative sub-classes of plaintiffs:

- the Korshak sub-class (those who retired before December 31, 1987);
- the Window sub-class (those who retired between January 1, 1988 and August 23, 1989);
- any participant who contributed to any of the four Pension Funds before the August 23, 1989 amendments to the Pension Code ("sub-class three"); and
- any person who was hired after August 23, 1989 ("sub-class four").

R. 55 ¶ 7. The amended complaint alleged five claims. Count I alleged that any reduction in plaintiffs' health care benefits would violate the Pension Clause of the Illinois Constitution, art. XIII, § 5. R. 55 ¶¶ 111-114. Count II alleged that any reduction would constitute a breach of contract under both the Pension Clause and the common law. *Id.* ¶¶ 115-119. Count III alleged that the doctrine of estoppel prohibited the City from terminating or otherwise changing the health care

coverage. *Id.* ¶¶ 120-122. Count IV alleged a claim under 42 U.S.C. § 1983 for deprivation of a property interest, *id.* ¶¶ 123-129, and count V alleged a violation of the Contracts Clause, U.S. Const. art. I, § 10, cl. 1, *id.* ¶¶ 130-136.

The City moved to dismiss under Fed. R. Civ. P. 12(b)(6), R. 33, and the district court granted the motion, A1. Lacking controlling precedent from Illinois courts on whether health care coverage is a pension benefit within the scope of the Pension Clause, the district court undertook to predict how the Illinois Supreme Court would rule on that issue. *Id.* at A13. The district court observed that this issue was pending before the Illinois Supreme Court in *Kanerva v. Weems*, stating that although it would ordinarily defer ruling until the Illinois Supreme Court provided a dispositive interpretation of the Pension Clause, plaintiffs had requested "an accelerated ruling to provide guidance for retirees who may, as a result of this court's decision, need to seek healthcare coverage through the new exchanges provided by the federal government." *Id.* at A12 n.6. The district court concluded that the Illinois Supreme Court would determine that the Pension Clause does not protect health care benefits, and dismissed count I on that basis. *Id.* at A11-A26.

For the same reason, the district court dismissed plaintiffs' claim for breach of contract (count II) to the extent it was based on the Pension Clause. A27. To the extent that count II was based on common-law contract principles, the court concluded that it failed to comply with federal pleading requirements and was precluded by the Illinois Statute of Frauds. *Id.* at A28-A30. The court also dismissed plaintiffs' claim for equitable estoppel (count III) because the complaint

failed to allege facts showing an affirmative act by the City itself or by officials with authority to bind it. *Id*. at A30-A32. Finally, the court dismissed plaintiffs' federal claims alleging a deprivation of property (count IV) and a violation of the Contracts Clause (count V) because plaintiffs had not sufficiently alleged a protected property right or contractual right to lifetime health care. *Id.* at A32-A34.[7]

Plaintiffs filed a notice of appeal and, since then, have twice asked this court to enjoin the City's planned reduction of retiree health care subsidies pursuant to the City's plan to eliminate such subsidies over a three-year period beginning in 2014. The first motion, filed on December 27, 2013, sought to enjoin reductions scheduled to take effect on January 1, 2014. 7th Cir. Dkt. 3-1. This court denied that motion on January 21, 2014. 7th Cir. Dkt. 16. After submissions by the parties, 7th Cir. Dkt. 18-19, the court also stayed this appeal pending the Illinois Supreme Court's decision in *Kanerva v. Weems*, and ordered the parties to file status reports within fourteen days of that decision, 7th Cir. Dkt. 21. On March 6, 2014, plaintiffs moved this court to reconsider its denial of their request for injunctive relief, 7th Cir. Dkt. 22, and the court denied that motion as well, 7th Cir. Dkt. 23.

On July 3, 2014, the Illinois Supreme Court issued its opinion in *Kanerva*, 13 N.E.3d 1228 (Ill. 2014), holding that the health care benefits provided to retirees were the type of benefit that fell within the purview of the Pension Clause. Plaintiffs' status report argued that *Kanerva* required summary reversal of the

[7] By separate order, the court denied plaintiffs' motions for class certification and preliminary injunction as moot. R. 61.

district court's decision dismissing their amended complaint, 7th Cir. Dkt. 24, while the City's status report explained why *Kanerva* does not control the outcome of this case, 7th Cir. Dkt. 25. Specifically, *Kanerva* did not address the alternative ground for affirming the judgment here, namely, that the City was never obligated to provide or subsidize retiree health care on a lifetime basis. 7th Cir. Dkt. 25 at 3-8. Thus, the City explained, there is no benefit for the Pension Clause to protect. *Id.* On July 23, 2014, this court rejected plaintiffs' request for summary reversal, and ordered the appeal to proceed to briefing. 7th Cir. Dkt. 26.

Plaintiffs filed their second motion for injunctive relief in this court on September 24, 2014, 7th Cir. Dkt. 41, six days after filing their amended opening brief on appeal. That motion was directed to the planned second round of reductions in the City's subsidy of retiree health care premiums, which are scheduled to take effect in January 2015. *Id.* The City filed a response, 7th Cir. Dkt. 43, and the court denied the motion on September 30, 2014, 7th Cir. Dkt. 45. On October 14, 2014, plaintiffs filed a motion to certify a question to the Illinois Supreme Court. 7th Cir. Dkt. 46. The court denied that motion on October 16. 7th Cir. Dkt. 47.

SUMMARY OF ARGUMENT

Plaintiffs' amended complaint is premised on an alleged right, which plaintiffs claim is protected by the Illinois and United States Constitutions, as well as various common-law doctrines, to lifetime health care coverage subsidized by the

City at the most favorable rates and terms each retiree had during his or her tenure with the City. This right does not exist on any theory.

As the source of their claimed entitlement, plaintiffs place heaviest weight on the Illinois Constitution's Pension Clause, but that clause does not protect or create a benefit that never existed in the first place. There is simply no binding obligation on the part of the City to provide or subsidize retiree health care on a lifetime basis. Indeed, the only requirements imposed on the City with respect to health care benefits were specifically limited by settlement agreements and statutes to discrete periods of time, which have now expired. Plaintiffs thus have no right for the Pension Clause to protect. For this reason, the Illinois Supreme Court's decision in *Kanerva* does not control the outcome of this case. *Kanerva* decided only that health care is a type of benefit subject to protection under the Pension Clause, but there it was undisputed that the State's obligation to provide its retirees with subsidized health care coverage was unlimited in time. And while the district court dismissed plaintiffs' Pension Clause claim on a different ground, this court may affirm on any ground supported by the record, including that plaintiffs' claimed right does not exist.

Plaintiffs' breach of contract claim is likewise insufficient as a matter of law. The amended complaint alleges the existence of a contract for lifetime health care based on the Pension Clause and the common law. Neither theory is legally sound. To the extent that plaintiffs' breach of contract theory is based on the Pension Clause, it fails for the same reason as the Pension Clause claim itself fails – the

City has never been obliged to provide or subsidize retiree health care on a lifetime basis. As for the common-law breach of contract theory, that claim is based on an alleged oral agreement between the City's Byrne Administration and the Police and Fire Unions, as well as alleged oral statements by unidentified City employees, that are barred by the Illinois Statute of Frauds.

Plaintiffs' equitable estoppel claim fails because the amended complaint alleges no facts to show an affirmative act by the City or by an official with express authority to bind the City. Nor did plaintiffs allege facts to show detrimental and reasonable reliance. And as for both plaintiffs' equitable estoppel claim and contract claim, plaintiffs' attempt to invoke the doctrine of collateral estoppel based on a nonfinal ruling in the state circuit court plainly fails.

Finally, plaintiffs' federal claims, resting on an alleged deprivation of property and an alleged impairment of contract, fail because plaintiffs do not have and have never had a property or contractual right to City-provided or City-subsidized health care for their lifetimes.

ARGUMENT

The district court correctly dismissed the amended complaint in this case. None of plaintiffs' five theories of liability states a claim upon which relief may be granted. The City was never obligated to provide or subsidize retiree health care on a lifetime basis. That is the crucial difference between this case and *Kanerva*, and why the holding in *Kanerva* that health care is a type of benefit subject to protection under the Pension Clause does not help plaintiffs here.

This court reviews the district court's dismissal de novo, accepting all well-pled factual allegations as true, and drawing all reasonable inferences from those facts in plaintiffs' favor. *E.g., Teamsters Local Union No. 705 v. Burlington Northern Santa Fe, LLC*, 741 F.3d 819, 823 (7th Cir. 2014). But the court is "not obliged to accept as true legal conclusions or unsupported conclusions of fact." *Hickey v. O'Bannon*, 287 F.3d 656, 658 (7th Cir. 2002). Nor is the court required to ignore facts alleged that undermine plaintiffs' claims. *Arazie v. Mullane*, 2 F.3d 1456, 1465 (7th Cir. 1993).

In addition, the court "may affirm the result below on any basis that appears in the record, even if it was not the district court's ground for dismissing the suit." *Marcus & Millichap Investment Services of Chicago, Inc. v. Sekulovski*, 639 F.3d 301, 312 (7th Cir. 2011). Indeed, "'[t]he rule is settled that, if the decision below is correct, it must be affirmed, although the lower court relied upon a wrong ground or gave a wrong reason.'" *Commonwealth Insurance Co. v. Titan Tire Corp.*, 398 F.3d 879, 887 (7th Cir. 2004) (quoting *Payne v. Churchich*, 161 F.3d 1030, 1038 (7th Cir. 1998)). On these standards, the judgment should be affirmed.

I. THE DISTRICT COURT CORRECTLY DISMISSED PLAINTIFFS' PENSION CLAUSE CLAIM.

The Pension Clause provides that "[m]embership in any pension or retirement system of the State [or] any unit of local government . . . shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired." Ill. Const. 1970, art. XIII, § 5. But the Pension Clause does not create or protect a right that never existed in the first instance. Instead, the existence of

an enforceable obligation to provide a benefit must be established before that benefit may be protected by the Pension Clause. Here, plaintiffs do not and cannot allege an enforceable obligation of the City and thus their Pension Clause claim fails.

A. The City Has No Legal Obligation To Provide Or Subsidize Retiree Health Care On A Lifetime Basis.

Plaintiffs' amended complaint asserts that any reduction in their health care benefits would impair their contractual rights in violation of the Pension Clause. R. 55 ¶¶ 111-114. That is incorrect. The City was never required, nor did it ever agree, to subsidize retiree health care on a lifetime basis.

The first statutes that addressed health care benefits for City retirees were the 1983 and 1985 amendments to the Pension Code. And those amendments were the only statutory provisions addressing the subject when members of the first three subclasses in this litigation entered the City's retirement system. This includes the putative Korshak and Window sub-classes, and sub-class three, whose members retired or began making contributions to a pension fund before August 23, 1989.[8] While these putative sub-classes rely heavily on those amendments, neither statute required the City to provide or subsidize retiree health care. Instead, they required the various Pension Funds to contract for or approve group health insurance contracts for retirees, and authorized the Funds to pay a portion of the premiums for that insurance out of the tax levies that provided revenue to the

---

[8] The members of sub-class four – those hired after August 23, 1989 – do not claim rights under the 1983 and 1985 amendments, which had been further amended before they were hired.

Funds. If a retiree's premium exceeded that amount, the amendments directed the Funds to deduct the balance from the retiree's pension check. 40 ILCS 5/5-167.5, 40 ILCS 5/6-164.2, 40 ILCS 5/8-164.1, and 40 ILCS 5/11-160.1. Each of the Funds is a separate and independent legal entity from the City, *see*, *e.g.*, *Eschbach v. McHenry Police Pension Board*, 977 N.E.2d 308, 313 (Ill. App. Ct. 2012) ("A municipality and a pension board are two separate entities."); *Rhoads v. Board of Trustees of the City of Calumet City Policemen's Pension Fund*, 689 N.E.2d 266, 270 (Ill. App. Ct. 1997) (municipality and board of trustees of municipal policemen's pension fund lacked privity for purposes of collateral estoppel, a conclusion supported by the "distinct identit[ies], constituenc[ies], and interest[s]" of those parties); *see also* R. 55 ¶ 17, and the obligations imposed were those of the Funds, not the City.

In fact, the City had no obligation to pay for any portion of retiree health care until it entered into the first settlement agreement, effective August 23, 1989, in the Korshak litigation. But the obligations the City assumed under that and subsequent settlements were specifically limited in time, and those settlement terms were then codified through amendments to the Pension Code, which likewise expressly limited the City's obligation to defined time periods that have now expired. By their terms, therefore, these settlement agreements and Pension Code amendments impose no obligation on the City to provide or subsidize lifetime health care for retirees.

Plaintiffs' amended complaint does not identify any other statute, nor any collective bargaining agreement or other written contract, on which they rely for

their claimed entitlement to lifetime health care coverage, and the statutes they do identify do not provide that benefit, as we explain. Nor is there any statute or written contract that obligates the City to fund retirees' health care for life, and the absence of any such statute or contract dooms plaintiffs' claims. Indeed, in every case in which Illinois courts have relied upon the Pension Clause to protect a benefit, the obligation to provide that benefit was imposed by statute. *See, e.g., Kanerva*, 13 N.E.3d at 1231-33 (Group Insurance Act required State to pay 5% of a retiree's health care coverage for every year of retiree's service, up to 100% for 20 years served); *Buddell v. Board of Trustees, State University Retirement System of Illinois*, 514 N.E.2d 184, 185 (Ill. 1987) (Pension Code permitted employees to purchase service credit for time served in the military); *Felt v. Board of Trustees of the Judges Retirement System*, 481 N.E.2d 698, 699 (Ill. 1985) (Pension Code provided that judicial retirement benefits would be calculated based on judge's salary on the last day of judicial service); *Kraus v. Board of Trustees of the Police Pension Fund*, 390 N.E.2d 1281, 1283 (Ill. App. Ct. 1979) (Pension Code provided that a retiree who had reached age of fifty and had twenty years of combined active and disabled service could elect to be paid a regular pension in lieu of a disability pension). Because plaintiffs cannot identify any statute, collective bargaining agreement, or other enforceable obligation that requires the City to provide the benefit they claim – namely, subsidized health care for life – there is no benefit for the Pension Clause to protect.

The district court did not rely on this rationale because it ruled that health care benefits are not within the scope of the Pension Clause. A11-A26. Nevertheless, plaintiffs have no right to lifetime, subsidized health care. The court can and should affirm the dismissal on this alternative ground. *E.g.*, *Marcus & Millichap*, 639 F.3d at 312.

Since *Kanerva* does not address this alternative ground for affirmance, plaintiffs' heavy reliance on that decision is misplaced. In *Kanerva*, the court considered a markedly different statutory scheme; there was no question that the statute the plaintiffs relied upon imposed an obligation on the State, that was not limited in time, to provide its retirees with subsidized health care benefits that was not limited in time. The City, by contrast, has no such obligation, and the Pension Clause cannot protect a benefit that does not exist in the first place, as we explain above. Because the City, unlike the State in *Kanerva,* has no enforceable obligation to provide lifetime retiree health care, there is nothing for the Pension Clause to protect, and plaintiffs therefore have no Pension Clause claim. The district court correctly dismissed count I, and that dismissal should be affirmed.

B. None Of Plaintiffs' Theories Establishes An Obligation By The City To Provide Or Subsidize Retiree Health Care For Life.

The City has previously explained that the lack of any legal obligation on its part to provide or subsidize retiree health care on a lifetime basis provides an alternate ground to affirm the decision below. 7th Cir. Dkt. 25 (status report); 7th Cir. Dkt. 43 (opposition to plaintiffs' second emergency motion for injunction pending appeal). Still, plaintiffs fail to address this fundamental flaw in their

Pension Clause theory, and instead press several other arguments in support of this claim. None of the arguments overcomes the fact that the City has never had an obligation to provide or subsidize lifetime retiree health care.

1. Plaintiffs' reliance on a presumption of vesting misses the point.

Plaintiffs argue that retiree health care benefits are "presumed vested by contract, separate from and, and in addition to, their protection by the Illinois Constitution." Plaintiffs' Br. 13 (typeface and capitalization changed). But questions about whether benefits that were in fact provided have vested are irrelevant here because plaintiffs have no right to lifetime health care benefits that could vest. Moreover, plaintiffs' vesting theory in no way assists in the determination whether plaintiffs have the right that they claim.

Plaintiffs misplace reliance on two decisions from the Illinois Appellate Court, *Marconi v. City of Joliet*, 989 N.E.2d 722 (Ill. App. Ct. 2013), and *Matthews v. Chicago Transit Authority*, 9 N.E.3d 1163 (Ill. App. Ct. 2014). Plaintiffs' Br. 13-15. *Marconi* and *Mathews* considered whether collective bargaining agreements and retirement plan agreements should be interpreted with a presumption in favor of or against the vesting of retiree health care benefits. *Marconi*, 989 N.E.2d at 729; *Matthews*, 9 N.E.3d at 1183. Here, plaintiffs do not assert a right to lifetime health care based on a collective bargaining agreement or other written contract (and no such contract exists). The presumption recognized in *Marconi* and *Matthews* is therefore inapplicable.

Plaintiffs' contention that "*Kanerva* further validates [these] appellate decisions that retiree healthcare benefits are to be construed with a presumption in favor of vesting," Plaintiffs' Br. 13, is similarly inapt. Again, because plaintiffs have no right to City-provided or City-subsidized health care for life, any presumption of vesting is beside the point. And, in any event, plaintiffs' reliance on *Kanerva* fails on its own terms because *Kanerva* does not address presumptive vesting.[9]

Finally, whatever the point of plaintiffs' one-sentence reference to the Arizona's Supreme Court decision in *Fields v. Elected Officials' Retirement Plan*, 320 P.3d 1160 (Ariz. 2014), Plaintiffs' Br. 16, plaintiffs make no argument that Illinois law and Arizona law are the same or give any other basis to look to Arizona law. Nor do plaintiffs provide any detail or context for *Fields.* Undeveloped arguments are forfeited. *E.g.*, *Williams v. Dieball*, 724 F.3d 957, 961 n.2 (7th Cir. 2013).

Regardless, *Fields* does not help plaintiffs. *Fields* ruled that legislative changes to a formula used to calculate pension benefit increases for retired elected officials violated the pension clause of the Arizona constitution. 320 P.3d at 1167-68. *Fields* did not declare, as plaintiffs represent, "that vesting is determined

---

[9] As part of their presumptive vesting argument, plaintiffs assert that the City's plan documents contain no "reservation of rights" language that permits the City to amend or terminate retiree health care plans. Plaintiffs' Br. 15. Plaintiffs never presented any of the pertinent plan documents to the district court and do not cite anything in support now. The City submitted the plan documents to this court as exhibits to the affidavits filed with the City's September 29, 2014 opposition to plaintiffs' emergency motion for stay/preliminary injunction. 7th Cir. Dkt. 43-2. Those documents establish that the City maintained the right to amend or terminate its health care plans. *Id.* at 30, 34, 37, 43, 49.

separately from, but may be additionally entitled to Constitutional protection." Plaintiffs' Br. 16. Nor did *Fields* apply any sort of presumption of vesting. Moreover, the holding was directly premised on the express provision in the Arizona statute that the benefit increases would be provided on a permanent basis. *Fields*, 320 P.3d at 1165. *Fields* is simply inapposite.

2. Plaintiffs' contention that the General Assembly cannot define the scope of the benefits it provides is incorrect as a matter of law.

Next, plaintiffs make a series of arguments to the effect that the General Assembly cannot, consistent with the Illinois Constitution, create a right to retiree health care benefits that is not conferred on a permanent basis. Plaintiffs' Br. 17-19. This is false. It is axiomatic that the Illinois General Assembly has the right to define the terms under which it provides a benefit. *E.g., Stenger v. Germanos*, 639 N.E.2d 179, 186 (Ill. App. Ct. 1994) ("the legislature is acting within its sphere when it places conditions on its statutorily-created right"); *Kaufman, Litwin and Feinstein v. Edgar*, 704 N.E.2d 756, 761 (Ill. App. Ct. 1988) ("Where the legislature grants a right that neither existed at common law nor was granted by the constitution, it is free to define the parameters and application of its purely statutory creature."). Indeed, the General Assembly was free to limit the City's subsidy obligation to discrete periods of time. *In re Petition for Detachment of Land from Morrison Community Hospital*, 741 N.E.2d 683, 689 (Ill. App. Ct. 2000) ("We are aware of no principle of law prohibiting the legislature from granting a privilege for a limited period of time, or from incorporating an 'expiration date' into an amendment.")

Similarly unavailing is plaintiffs' assertion that "statutory construction principles require that constitutional guarantees should be broadly construed and that constitutional provisions should prevail over conflicting statutory provisions." Plaintiffs' Br. 17. The amendments to the Pension Code appropriately defined and limited the City's obligations to subsidize retiree health care benefits to specific time periods. For that reason, there is no conflict between the Pension Clause and the amendments.

Plaintiffs also press two arguments that were never raised in the district court – that the time-limited amendments "cannot diminish the prior non-temporal statutes," and that the amendments also violate the special legislation clause of the Illinois Constitution, Plaintiffs' Br. 17. These arguments are therefore forfeited. *Milligan v. Board of Trustees of Southern Illinois University*, 686 F.3d 368, 386 (7th Cir. 2012). Indeed, plaintiffs conceded as much in the district court, at least with regard to the first of these new arguments. R. 49 at 18 (plaintiffs' acknowledgement that they failed to respond to several issues raised in City's motion to dismiss, including the "time delimitation of the PA 86-273 legislation and its succeeding provisions"). As for plaintiffs' second new argument, their discussion of special legislation below was merely an undeveloped footnote. R. 49 at 10. That also did not preserve the issue for appeal. *E.g., Williams*, 724 F.3d at 961 (undeveloped arguments are forfeited).

Plaintiffs' new arguments fail on the merits, in any event. By "prior non-temporal statutes," plaintiffs mean the 1983 and 1985 amendments to the Pension

Code. But those amendments required the Pension Funds, not the City, to contribute towards retiree health care coverage. Because those amendments did not require the City to provide or subsidize health care benefits, the later benefits, all of which were time-limited, did not diminish any rights that plaintiffs had with respect to the City.

As for plaintiffs' special legislation challenge, that required them to show legislation that arbitrarily "confer[s] a special benefit or privilege upon one person or group and excluding others that are similarly situated." *Crusius v. Illinois Gaming Board*, 837 N.E.2d 88, 94 (Ill. 2005). The Pension Code amendments do not violate this prohibition because they did not discriminate in favor of a select group, but merely codified the parties' agreement to settle claims (and then to extend the settlement periods) brought on behalf of the group that benefited from the amendments. There is no other similarly situated group and thus also no discrimination.[10]

Finally, plaintiffs assert error based on the district court's reliance on statutory language expressing the General Assembly's intent that the amendments codifying the parties' various settlement agreements should not be construed as creating pension or retirement benefits for purposes of the Pension Clause. Plaintiffs' Br. 17. But, as we made clear in our post-*Kanerva* status report, 7th Cir.

---

[10] Tellingly, the Pension Code amendments that plaintiffs now contend are unconstitutional provided plaintiffs with City-subsidized health care for years. The upshot of plaintiffs' claim that the amendments are invalid special legislation is that the City would have had no obligation to comply with them in the first instance, and plaintiffs cannot claim any rights under them.

Dkt. 25, our position on appeal does not depend on whether health care is a type of benefit that falls within the scope of the Pension Clause. Our point, which plaintiffs continue to ignore, is that there is no statute, collective bargaining agreement, or other written contract that obligates the City to provide or subsidize retiree health care on a lifetime basis.

3. Plaintiffs' contention that the district court concluded that the Pension Clause protects only those benefits in place as of 1970 is irrelevant and incorrect.

Plaintiffs challenge what they contend is the district court's conclusion that the Pension Clause "protects only the benefits of participation that were in place at the time of the [1970 Illinois] Constitution's adoption." Plaintiffs' Br. 13. The argument is wholly irrelevant because on appeal, we do not rely on the district court's analysis of the Pension Clause, but instead seek affirmance on the alternative ground that plaintiffs have not shown any obligation on the part of the City to provide or subsidize lifetime health care for retirees. And the argument fails on its own terms because the district court reached no such conclusion. The district court found that the Pension Code, at the time of the adoption of the 1970 Constitution, contained no provisions addressing retiree health care, and for that reason and others, concluded that the Pension Code, "as it existed at the drafting of the Pension Clause, does not support the argument that the framers intended to protect more than the retirement income classically associated with a pension." A19. This was not, as plaintiffs contend, a conclusion that the Pension Clause protects only those benefits that existed in 1970. More important, as we explain, plaintiffs have never had the right they claim, including any time after the 1970

Constitution. The absence of such right requires affirmance of the district court's dismissal of plaintiffs' claims.

II. THE DISTRICT COURT CORRECTLY DISMISSED PLAINTIFFS' BREACH OF CONTRACT AND EQUITABLE ESTOPPEL CLAIMS.

Plaintiffs' complaint also sought to allege state-law claims for breach of contract and equitable estoppel, but plaintiffs barely defend these on appeal. Instead, they argue that preliminary rulings the circuit court made more than twenty-six years ago, in denying the City's motion to dismiss the counterclaim filed by the Pension Funds in the Korshak litigation, "are collateral estoppel or at least entitled to great deference against dismissal" of their breach of contract and equitable estoppel claims. Plaintiffs' Br. 19. Plaintiffs also assert, without support, that *Kanerva* automatically "revives" counts II and III. *Id.* at 24. These assertions are as meritless as the claims themselves.

A. Plaintiffs Failed To State A Claim For Breach Of Contract.

Plaintiffs' contract claim rested on allegations of rights under both the Pension Clause, R. 55 ¶ 116, and the common law, *id.* ¶ 117. The district court correctly ruled that these allegations failed to state a claim. A26-A30.

1. Plaintiffs have no claim under the Pension Clause and as a result no contract claim either.

As we explain above, plaintiffs fail to show that they have a right to require the City to provide or subsidize health care for life, and without that, there is no benefit for the Pension Clause to protect. In turn, there can be no breach of contract claim premised on a contract that does not exist.

2. Plaintiffs have no common-law contract claim.

Plaintiffs allege that "under common law principles of contract," certain retirees "have a contractual right to the plan in effect during the period October 1, 1987 to August 23, 1989," at rates then in existence and subsidized by the Pension Funds. R. 55 ¶ 117. This barebones allegation does not meet federal pleading standards and, besides, is barred by the Statute of Frauds.

To begin, the single paragraph of plaintiffs' complaint purporting to allege a contract under Illinois law does not comport with Fed. R. Civ. P. 8, which precludes a plaintiff from going forward on allegations amounting to nothing more than "labels and conclusions." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). To the contrary, a complaint must contain sufficient factual matter to state a claim that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

Here, the district court correctly concluded that plaintiffs' sole paragraph alleging a contract lacked "enough factual content to draw the plausible inference that Plaintiffs had a contractual right to 'fixed-rate-for-life healthcare premiums.'" A28. Moreover, as the district court observed, "[i]n their response to the City's motion to dismiss, plaintiffs had another opportunity to clarify the alleged facts which give rise to their contract claim. Plaintiffs inexplicably failed to do so." *Id.* The district court's dismissal of the common-law breach of contract claim can be affirmed on this basis alone.

The district court also addressed "[t]he only provisions that might plausibly allow the court to infer the existence of a contract," which it found "are the alleged 'handshake' agreement between the Byrne administration and the Police and Fire Unions which led to the 1983 amendments to the Pension Code . . . and the oral statements of City employees at the alleged 'Pre-Retirement Seminars'[.]" A28. Yet these allegations, as the district court properly concluded, cannot support a breach of contract claim because they are barred by the Statute of Frauds. *Id*. at 29-30.

The Illinois Statute of Frauds provides that an oral agreement not capable of being performed within one year is unenforceable "unless the promise or agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized." 740 ILCS 80/1. Thus, in *McInerney v. Charter Golf, Inc.*, 680 N.E.2d 1347 (Ill. 1997), the Illinois Supreme Court held that the Statute of Frauds bars a contract claim for lifetime employment based on an alleged oral agreement. The court explained:

> [a] "lifetime" employment contract is, in essence, a permanent employment contract. Inherently, it anticipates a relationship of long duration-certainly longer than one year. In the context of an employment-for-life contract, we believe that the better view is to treat the contract as one "not to be performed within the space of one year from the making thereof." To hold otherwise would eviscerate the policy underlying the statute of frauds and would invite confusion, uncertainty and outright fraud. Accordingly, we hold that a writing is required for the fair enforcement of lifetime employment contracts.

Id. at 1351-52. Plaintiffs' claimed contract for lifetime health care coverage likewise cannot be performed within one year, and their attempt to rely on alleged oral

promises of lifetime health care benefits therefore is barred by the Statute of Frauds.

Plaintiffs' efforts to get around the Statute of Frauds are insufficient. Plaintiffs contend that the statute is inapplicable because its writing requirement is satisfied and also because the doctrine of part performance applies. Plaintiffs' Br. 24-25. These arguments fail right out of the blocks because plaintiffs did not raise them in the district court, and therefore they are forfeited. *E.g.*, *Milligan*, 686 F.3d at 386; *see also Evans v. Fluor Distribution Companies, Inc.*, 799 F.2d 364, 369 (7th Cir. 1986) (plaintiff's claim that doctrine of part performance excepted alleged oral agreement from Illinois Statute of Frauds was never presented to district court and therefore was not preserved for appeal). Moreover, plaintiffs affirmatively "declined to respond to the City's argument" on this point because, as the district court observed, "in plaintiffs' view, the Statute of Frauds – or perhaps the entire breach of contract claim – is 'decidedly [a] side issue[ ] to the main event here.'" A29 (quoting Plaintiffs' Opposition to the City's Motion to Dismiss, R. 49 at 18). Plaintiffs should be held to that concession, with the result that arguments to avoid the Statute of Frauds should be deemed not only forfeited but waived. Arguments abandoned in the district court are waived on appeal. *Washington v. Parkinson*, 737 F.3d 470, 473 (7th Cir. 2013); *Williams*, 724 F.3d at 961 n.2.

Plaintiffs' arguments fail on the merits as well. Plaintiffs contend that sufficient writings exist to satisfy the Statute of Frauds, pointing first to "legislative enactments." Plaintiffs' Br. 24 (citing R. 55 ¶¶ 33, 35). But the only legislative

enactments that memorialized agreements with plaintiffs are those that codified settlement agreements, and plaintiffs make no claim that the City failed to adhere to the terms of those agreements for the applicable time periods. Nor could the 1983 and 1985 statutes satisfy the Statute of Frauds. Among other things, the writing must contain "all the essential terms of the agreement," *Bower v. Jones*, 978 F.2d 1004, 1008 (7th Cir. 1992) (applying Illinois law), and the 1983 and 1985 amendments do not set forth any terms of any agreement. Plaintiffs' reliance on "the City's budget and appropriations" as "[f]urther written enactments" purportedly memorializing their alleged contract, Plaintiffs' Br. 24 (citing R. 55 ¶¶ 56-57), is misplaced for the same reason. There is no language in any of these appropriation provisions setting forth an agreement to provide retirees with lifetime health care benefits.

Plaintiffs also point to an unspecified pamphlet they claim advised certain retirees of "the terms of the City's annuitant medical care plan." Plaintiffs' Br. 24. The alleged pamphlet was not attached to the complaint, which contains a single allegation, R. 55 ¶ 44, giving no detail about what the pamphlet said. Significantly, plaintiffs do not allege that the pamphlet contained the central term of the alleged contract – lifetime health care benefits. Thus, even assuming the alleged pamphlet existed, it would be insufficient to overcome the Statute of Frauds. *Dobosz v. State Farm Fire & Casualty Co.*, 458 N.E.2d 611 (Ill. App. Ct. 1983), does not avoid this problem for plaintiffs because *Dobosz* does not address what is required to determine that a writing contains all the terms necessary to satisfy the Statute of

Frauds. Rather, the issue there was whether an advertising brochure distributed by an insurance company would be deemed part of the insurance policy and preempt any inconsistent language contained in that policy. *Id.* at 613.

Plaintiffs' reliance on alleged pre-retirement seminars and testimony by certain witnesses in the Korshak litigation regarding oral statements purportedly made at these seminars, Plaintiffs' Br. 24 (citing R. 55 ¶¶ 46-47), is even farther afield. Again, under Illinois law, oral statements cannot satisfy the Statute of Frauds. Nor does the equitable doctrine of part performance render the Statute of Frauds inapplicable, *id.* at 24-25. To invoke this doctrine and remove an oral contract from the Statute of Frauds, the plaintiff must show that "the acts allegedly done in performance are positively attributable exclusively to the contract." *Podolsky v. Alma Energy Corp.*, 143 F.3d 364, 371-72 (7th Cir. 1998) (applying Illinois law) (internal quotations and citations omitted). Plaintiffs cannot satisfy the requirement here. As the Illinois Appellate Court held in *Mapes v. Kalva Corp*, 386 N.E.2d 148 (Ill. App. Ct. 1979), an employee's continued work cannot satisfy the doctrine of part performance. *Id.* at 152. Otherwise, the exception would swallow the rule; once an employee began work, the part performance exception would be satisfied and the Statute of Frauds would be rendered inapplicable. As the court explained:

> partial performance must be of such character that it is impossible or impractical to place the parties in status quo or restore or compensate the party performing for what he has parted with or the value of his performance so that refusal to complete engagement would be a virtual fraud upon the party. Normal employment contracts such as the one here do not involve this kind of performance. Moreover, to allow the

> fact that an employee worked and was paid for part of that year to act as such a bar would make the relevant provision of the statute of frauds totally meaningless. Any contract where the employee had started work and received a paycheck would be protected from the application of the statute.

Id. at 152 (citation omitted). Plaintiffs' performance of work for the City here is likewise insufficient to satisfy the doctrine of part performance.

Finally, plaintiffs attempt to present new evidence that was not submitted to the district court – the August 7, 2014 affidavit of James McDonough and the February 7, 1990 affidavit of Herbert Kordeck, Sep. App. A74-A79. These new affidavits are not part of the record on appeal.[11] The court therefore should not consider them. Fed. R. App. P. 10(a); *United States v. Burke*, 781 F.2d 1234, 1245 (7th Cir. 1985). "The appellate stage of the litigation process is not the place to introduce new evidentiary materials." *Berwick Grain Co., Inc. v. Illinois Department of Agriculture*, 116 F.3d 231, 234 (7th Cir. 1997). And in any event, the affidavits do not help plaintiffs – the alleged oral statements they recount are barred by the Statute of Frauds.

B. Plaintiffs Failed To State A Claim For Equitable Estoppel.

Plaintiffs' estoppel claim alleged, in its entirety, that "[t]he City and funds are estopped by their own conduct from changing or terminating the annuitant coverage to a level below the highest level of benefit during a participant's participation in the group healthcare benefits" and that the "City is estopped from

---

[11] Plaintiffs did present a nearly identical McDonough affidavit, dated May 5, 1990, to the district court along with their response to the City's motion to dismiss. R. 49-2.

changing or terminating the coverage for class period retirees without affording the Funds a reasonable time in which to obtain alternative coverage from another carrier." R. 55 ¶¶ 121-122. The district court treated this as a claim for equitable estoppel and correctly ruled that these allegations do not state a claim. A30-A32.

A claim for equitable estoppel under Illinois law requires allegations of (i) an affirmative act by either the government itself or an official with express authority to bind the City; and (ii) the plaintiff's reasonable reliance upon that act that induces a detrimental change in position. *E.g.*, *Patrick Engineering, Inc. v. City of Naperville*, 976 N.E.2d 318, 331 (Ill. 2012). Equitable estoppel against a public body is disfavored and recognized only in extraordinary and compelling circumstances, *e.g.*, *Morgan Place of Chicago v. City of Chicago*, 975 N.E.2d 187, 195 (Ill. App. Ct. 2012); *Halleck v. County of Cook*, 637 N.E.2d 1110, 1114 (Ill. App. Ct. 1994), and only when necessary to prevent fraud and injustice, *Halleck*, 637 N.E.2d at 1114. Application of estoppel is "especially prohibited" and "particularly disfavored" where, as here, public revenues are involved. *Id.*; *Patrick Engineering*, 976 N.E.2d at 332.

Plaintiffs do not deny that the district court properly treated their estoppel claim as one for equitable estoppel, but the allegations do not satisfy either element of that claim. First, the amended complaint contains no allegations concerning an affirmative act by the City itself, such as legislation. In addition, as the district court noted, the amended complaint is "devoid of any allegations of affirmative acts by officials with express authority to bind the City." A31. Plaintiffs allege only that

between 1984 and 1987, certain City employees attended "Pre-Retirement Seminars" where various retirement benefits, including medical benefits, were discussed; that certain employees were told they would be able to "participate in the health plan for life . . . at no cost"; and that it became "widely understood" by City employees that they could "rely on" this health care coverage for life. R. 55 ¶¶ 45-48. But when it comes to identifying an individual with authority to bind the City, the complaint alleges merely that "City officials of the Health and Benefits Office were present" at these seminars. *Id.* ¶ 46. As the district court also observed, plaintiffs asserted similar claims in the Korshak litigation, but "despite the fact that the intervening twenty-five years should have allowed a sufficient opportunity for investigation, plaintiffs still cannot identify any City officials who purportedly possessed the requisite express authority to bind the City on this point." A31-A32. Plaintiffs' failure to allege facts showing an affirmative act by the City itself or by an official with express authority to bind it alone defeats their claim for equitable estoppel.

The district court did not reach the requirement of reasonable and detrimental reliance, but the amended complaint does not contain sufficient allegations of that, either. To make this showing against a municipality, a plaintiff "must have not only substantially changed its position, based on the affirmative act of the municipality or its officials, but also justifiably done so, based on its own inquiry into the municipal officer's authority." *Patrick Engineering*, 976 N.E.2d at 331 (internal citations omitted). On each of these points, plaintiffs' complaint falls

short: it does not allege facts to show either that plaintiffs substantially changed their position, or that they made an inquiry into the authority of the City official who allegedly made promises to them. For this defect as well, the claim was properly dismissed.

C. Plaintiffs' Assertions Of Collateral Estoppel And Claim "Revival" Are Meritless.

As we explain, plaintiffs' claims of breach of contract and equitable estoppel fail on the merits, each for multiple, independent reasons. Plaintiffs ignore these deficiencies, focusing instead on the state court's ruling denying the City's motion to dismiss the counterclaim in the Korshak litigation, which, according to plaintiffs, collaterally estops the City from defending against these claims now. Plaintiffs' Br. 19-23. Plaintiffs are incorrect. As the district court correctly ruled, the doctrine of collateral estoppel requires a final judgment on the merits, and under Illinois law, the denial of a motion to dismiss is not a final judgment on the merits. A27; *see also Kalush v. Deluxe Corp.*, 171 F.3d 489, 493 (7th Cir. 1993) ("[u]nder Illinois law, collateral estoppel requires that . . . there be a final judgment on the merits"); *Catlett v. Novak*, 506 N.E.2d 586, 589 (Ill. 1987) (denial of motion to dismiss does not constitute a final judgment on the merits). Accordingly, plaintiffs' collateral estoppel theory fails as a matter of law.

As a fallback, plaintiffs assert that the prior, nonfinal rulings in the Korshak litigation "are at least entitled to great deference." Plaintiffs' Br. 19. Plaintiffs cite nothing to support this proposition, which also is incorrect. No legal doctrine

required the district court to defer to prior rulings in a case in which no final judgment was entered.

Plaintiffs' contention that the Illinois Supreme Court's *Kanerva* decision "revives" their breach of contract and equitable estoppel claims is equally unavailing. As we explain above, the district court correctly dismissed plaintiffs' breach of contract claim because (i) insofar as that claim rests on allegations under the Pension Clause, no contract rights exist; and (ii) insofar as the claim relies on common-law principles, plaintiffs' allegations fail to comply with Rule 8, are barred by the Statute of Frauds, and are insufficient to show a right to City-provided or City-subsidized health care for life. As for the equitable estoppel claim, the amended complaint fails to allege facts sufficient to plead the required elements. *Kanerva* does not address any of these issues. As important, plaintiffs' revival argument fails because there is no basis to revive claims that are deficient as a matter of law. Regardless of the grounds for the district court's decision, this court may affirm its judgment on any proper ground. *Marcus & Millichap*, 639 F.3d at 312; *Commonwealth Insurance*, 398 F.3d at 887.

III. THE DISTRICT COURT CORRECTLY DISMISSED PLAINTIFFS' SECTION 1983 AND CONSTITUTIONAL CLAIMS.

Plaintiffs' amended complaint also sought to allege a claim under 42 U.S.C. § 1983 for "deprivation of a property right" in violation of the Fourteenth Amendment, R. 55 ¶ 125, and a claim for a violation of the Contracts Clause, U.S. Const. art. I, § 10, cl. 1, R. 55 ¶ 135. These counts fail to state a claim for the reason that plaintiffs lack a property or contractual right to City-provided or City-

subsidized health care benefits for life. Accordingly, dismissal of counts IV and V should be affirmed on this ground.

Plaintiffs' amended complaint alleges that they have "a property right to a lifetime healthcare plan, unreduced from the best terms during a person's participation in one of the retirement funds." R. 55 ¶ 124. On this basis, plaintiffs contend that "[e]ach healthcare premium charged to the annuitants by the defendants which exceeds the person's best entitled premium, [sic] is a deprivation of a property right secured under the Fourteenth Amendment . . . ." *Id.* ¶ 125. But "[p]roperty interests . . . are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law – rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972); *accord Moore v. Muncie Police and Fire Merit Commission*, 312 F.3d 322, 326 (7th Cir. 2002). As we explain above, plaintiffs have not alleged facts to show that the City has a binding obligation to provide or subsidize retiree health care for life. Plaintiffs therefore have no protected property right, and their claim of unconstitutional deprivation fails as a matter of law.

The amended complaint also alleges that "[b]y increasing the healthcare premiums charged to annuitants, or adversely changing the terms or the subsidy, the City and the Funds have denied or impaired the plaintiffs' and class members' contractual rights." R. 55 ¶ 132. This allegation fails to state a violation of the

Contracts Clause. Such a claim requires allegations sufficient to show: (i) the existence of a contractual relationship; (ii) that a change in the law impaired that contractual relationship; and (iii) that the impairment is substantial. *Council 31 of the American Federation of State, County and Municipal Employees, AFL-CIO v. Quinn*, 680 F.3d 875, 885 (7th Cir. 2012). As we explain, the amended complaint does not allege facts sufficient to show that plaintiffs have a contract with the City for lifetime health care coverage. Accordingly, their Contracts Clause claim fails at the outset.

In dismissing both of these claims, the district court relied on its determination that the Illinois Supreme Court would not find health care benefits protected under the Pension Clause, A33-A34, but that dismissal can be affirmed on the alternative ground that plaintiffs have no property or contract right to lifetime health care coverage provided or subsidized by the City.

Finally, plaintiffs contend, as they do for their contract and equitable estoppel claims, that their Section 1983 and federal constitutional claims are somehow "revived" by *Kanerva*. Plaintiffs' Br. 26. That is incorrect here as well. As we explain, plaintiffs have failed to allege the existence of a protectable property interest or contract, and therefore there are no claims to revive.[12]

---

[12] As to plaintiffs' undeveloped suggestion that "[r]eferral of the matter to the Illinois Supreme Court on any issue herein would be appropriate as well[]", Plaintiffs' Br. 26, plaintiffs' similar request by separate motion, 7th Cir. Dkt. 41, has already been denied by the court, 7th Cir. Dkt. 45. And for good reason –there is nothing here to "refer." Illinois Supreme Court Rule 20 provides for certification where "there are no controlling precedents in the decisions of [the supreme] court on an issue that might be "determinative." Ill. Sup. Ct. R. 20. Here, no precedents are

CONCLUSION

For all of the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted,

STEPHEN R. PATTON
Corporation Counsel
of the City of Chicago

By: /s/ Benna Ruth Solomon
BENNA RUTH SOLOMON
JANE ELINOR NOTZ
Deputy Corporation Counsel
MYRIAM ZRECZNY KASPER
Chief Assistant Corporation Counsel
SARA K. HORNSTRA
Assistant Corporation Counsel
30 N. LaSalle Street, Room 800
Chicago, Illinois 60602
(312) 744-7764

Richard J. Prendergast
Michael T. Layden
Lionel W. Weaver
RICHARD J. PRENDERGAST, LTD.
111 W. Washington St., Suite 1100
Chicago, Illinois 60602

Joseph M. Gagliardo
Jennifer A. Naber
James J. Convery
LANER MUCHIN, LTD.
515 North State Street, Suite 2800
Chicago, Illinois 60654
(312) 467-9800

---

needed to determine that plaintiffs were never promised lifetime health care subsidies. This court can easily determine that for itself.

CERTIFICATE OF COMPLIANCE

The undersigned attorney certifies, in accordance with Fed. R. App. P. 32(a)(7)(C), that the foregoing brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B). The brief contains 11,591 words, which was calculated using the word count feature of Microsoft Word 2010, the word-processing system used to prepare this brief.

By: Richard J. Prendergast

CERTIFICATE OF SERVICE

I, Richard J. Prendergast, an attorney, state that I caused a copy of the foregoing **Brief of Defendant-Appellee The City of Chicago** to be filed and delivered via the Court's Electronic Case Filing System on October 22, 2014, upon the following:

Clinton A. Krislov
Kenneth T. Goldstein
Krislov & Associates, Ltd.
20 N. Wacker Dr., Suite 1350
Chicago, Illinois 60606
(312) 606-0500
clint@krislovlaw.com
ken@krislovlaw.com

and via email upon Counsel for the Pension Funds:

Graham Grady
Cary Donham
Shefsky & Froelich
111 E. Wacker Dr., Suite 2800
Chicago, Illinois 60601
(312) 527-4000
ggrady@shefskylaw.com
cdonham@shefskylaw.com
Counsel for the Laborers' and Retirement Board Employees' Annuity and Benefit Fund of Chicago

David R. Kugler
David R. Kugler & Associates, Ltd.
100 N. LaSalle St., Suite 501
Chicago, Illinois 60602
(312) 782-5430
davidkugler@comcast.net
Counsel for the Policemen's Annuity and Benefit Fund

Edward J. Burke
Mary Patricia Burns
Burke, Burns & Pinelli, Ltd.
Three First National Plaza, Suite 4300
Chicago, Illinois 60602
(312) 541-8600
eburke@bbp-chicago.com
mburns@bbp-Chicago.com
Counsel for the Firemen's Annuity and Benefit Fund of Chicago and The Municipal Employees' and Benefit Fund of Chicago

By: /s/ Richard J. Prendergast