

## Supreme Court Finds AG Cannot Challenge Pension Board Decision on Jon Burge

*People ex rel. Madigan v. Burge*,  
2014 IL 115635

In a follow up to a case featured in our January 2013 newsletter, the Illinois Supreme Court has overturned an Appellate Court decision and thrown out a lawsuit filed by the Attorney General seeking to stop pension payment to former Chicago Police Commander Jon Burge.

As you may recall, in 2010 Burge was convicted in Federal Court of perjury in connection with a civil suit alleging he was aware of a pattern of torture and abuse conducted by officers under his supervision. Following his convictions, the Retirement Board of the Policemen's Annuity and Benefit Fund of Chicago held a hearing to determine whether Burge's felony convictions should result in termination of his police pension. On the issue of whether Burge's convictions arose out of or were connected with his police employment, the Board deadlocked 4-4. The Board issued a written administrative decision confirming the motion to divest Burge failed and he would continue to receive a pension benefit.

In response, the Attorney General filed a lawsuit pursuant to Section 1-115 of the Pension Code alleging payment to Burge would violate the Pension Code. The Circuit Court dismissed the lawsuit finding it did not have jurisdiction to hear the Attorney General's complaint. The Appellate Court reversed and remanded the case for a hearing on the merits of whether Burge's conviction qualified as a duty related felony.

In a 4-3 decision, the Illinois Supreme Court found the circuit court correctly found it lacked jurisdiction to hear the Attorney General's lawsuit. At issue were two conflicting provisions of the Pension Code. Section 1-115 gives the Attorney General the authority to bring a civil action to enjoin any act which violates any provision of the Pension Code. Conversely, Section 5-189 of the Pension Code gives the Chicago Police Pension Board "exclusive original jurisdiction" in any matter relating to or affecting the fund. In reversing the decision of the appellate court, the Supreme Court reasoned because Section 5-189 governed any action related to the fund, it was more specific than the general provisions of Section 1-115 referring to "any" violation of the Pension Code. Because the Court found Section 1-115 did not grant the Attorney General an original right of action in this case, it found the only method of review of the Pension Board's decision was through the Administrative Review Law. Because the Attorney General's complaint did not seek administrative review of the Pension Board decision, the circuit court correctly concluded it did not have jurisdiction to hear the Attorney General's complaint.

The Supreme Court next addressed the effect of the 4-4 tie vote at the pension board proceedings. It noted that Burge has been receiving pension benefits since 1997 when the board approved his benefits by majority vote. Since the vote to terminate his benefits failed to garner a majority, the decision granting him benefits passed in 1997 remains in effect.

The Court concluded by noting the limited nature of its opinion pertaining only to the issue of who has authority to adjudicate the termination of Burge's retirement benefits. It did not reach or pass judgment on the issue of whether Burge's convictions qualify as duty related felonies mandating termination of his pension.