

Chrysler decision

The Issue: Court to allow sale.

Our View: Challenge seemed valid.

The U.S. Supreme Court ruled late Tuesday that Chrysler's sale to Fiat could go forward, thus ending Indiana State Treasurer Richard Mourdock's challenge on behalf of Indiana pension funds and the Major Moves construction fund.

The court did not consider the merits of the Indiana case, deciding only that the full court would not hear the case.

It was a real disappointment for Mourdock, who had taken considerable heat from critics who said he was endangering auto manufacturing jobs with his legal challenge.

But the Evansville Republican countered that he is doing his duty by attempting to protect pensioners and highway construction funds from what he claimed was a violation of bankruptcy procedures.

Communities where Chrysler products are manufactured were frustrated on one side. People in these areas saw Mourdock as hindering their ability to hold on to jobs.

Nearby in Michigan, criticism was equal to that coming from Hoosiers. Republican U.S. Rep. Gary Peters, who represents the district that includes the Chrysler headquarters and three GM plants, said Indiana's pension and construction funds would lose only \$4.8 million if Chrysler was allowed to emerge from bankruptcy, but that Indiana would lose more than \$20.7 million in tax revenue and 4,000 jobs if Mourdock succeeded.

In addition, the White House appealed to the court on Tuesday, pleaded that the sale would be killed, and thousands of jobs would be lost if the Indiana funds prevailed.

It appeared that Mourdock had a valid legal argument against a precedent-setting decision by President Barack Obama and his auto task force to redo established bankruptcy rules.

On Monday, U.S. Supreme Court Justice Ruth Bader Ginsburg, with no explanation, temporarily halted the automaker's planned sale to the Italian automaker.

Even with the court ruling, legal questions will persist about whether the administration violated long-standing bankruptcy rules by moving unsecured stakeholders, particularly the United Auto Workers union, ahead of the secured debt-holders. These include Indiana public school teachers and Indiana State Police pension funds, and the Major Moves highway fund.

Mourdock maintained that court rules have long held that in the event of bankruptcy, secured creditors are the first to be paid. It is only after they are satisfied that non-secured interests are to be paid.

But in the Chrysler case, Fiat will get up to a 35 percent stake in the new company, the United Auto Workers will get a 55 percent stake and the United States and Canadian governments will get a combined 10 percent stake, according to The Associated Press.

After that, all of the secured debt-holders will get a total of \$2 billion in cash — 29 cents on the dollar — for their total \$6.9 billion of Chrysler bonds. (The three Indiana funds hold only about \$42.5 million.)

On the line, legally, was the question of whether the executive branch of the federal government can change proceedings that are regarded as the responsibility of the legislative and the judicial branches.

John Berlau, an official with the Competitive Enterprise Institute, had said that in setting rules for bankruptcy, the Founding Fathers envisioned almost no role for the U.S. president and gave power almost entirely to Congress and the federal courts. He said president has no power to intervene in individual bankruptcies. But that appears to be exactly what took place.

No one wanted to see a single job lost in Indiana, but neither did we support major make-it-up-as-we-go-along solutions that appear to be unconstitutional.