

Governor says Mourdock did 'his duty'

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INDIANAPOLIS — Gov. Mitch Daniels came out swinging Wednesday in defense of embattled state Treasurer Richard Mourdock and his unsuccessful effort to protect Indiana pension funds by challenging the sale of Chrysler to Italian automaker Fiat.

That effort died Tuesday when the Supreme Court declined to hear the Indiana pension funds' challenge.

Critics have accused the treasurer of political grandstanding and said he was jeopardizing the auto industry jobs the sale could preserve.

But Daniels said Mourdock "was doing his duty, and he did it bravely.

"I think it was one of the most principled and gutsy things I've seen an elected official do in a long time," the governor said.

Rebuffed by the courts and battered by political opponents, Mourdock still said Wednesday he'd do it again in a heartbeat.

The former Vanderburgh County commissioner who now is charged with investing the state's money said the basis for his actions was the oath he swore upon taking office.

A copy of that oath, to uphold the state and national constitutions, hangs on the wall of his Statehouse office.

Every once in a while, Mourdock says, he rereads that oath. It's a reminder of his duty to protect the Hoosiers who elected him, he said.

"I would never ask any other elected officeholder, Democrat or Republican, to ignore the law," Mourdock said. "And just the same, I take my oath of office very seriously."

The conclusion of the Indiana funds' challenge, and the resulting sale of Chrysler, have unleashed a maelstrom of political activity, shining a bright spotlight on an official who ordinarily manages to shy away from much attention.

State Democratic chairman Dan Parker accused Mourdock of going on an attention-

grabbing political crusade against President Barack Obama, and by doing so, putting Hoosier families who depend on the auto industry's success at risk.

The attention-grab charge, Mourdock said, is "pure bunk."

"Any smart politician would run, not walk, away from controversy like this," he said. "I had and I have but one objective, and that is to get the absolute maximum value for the beneficiaries I represent."

Indiana Democrats are turning their attention to the \$2 million in legal fees resulting from Mourdock's challenge. They have called for "a full accounting of how much money was spent trying to shut down the revitalization of Chrysler."

Murdock said the legal fees were necessary because the state received notice it could object to the bankruptcy proceedings less than two days before the paperwork was due to be turned in at a federal court in New York.

The state funds' only option, he said, was to hire a law firm that already had been working on the case.

The three funds — two of which pay the pensions of retired state police and teachers, and the state's Major Moves construction fund — stand to lose about \$5 million from Chrysler's bankruptcy.

The criticism has been harsh because some worried that Mourdock's challenge could scuttle Chrysler's pending sale and restructuring, and therefore cause pain much greater than the dip in retirement funds.

"It's so hard to sort this out what's fact, what's emotion, what's politics," said Tim Mahoney, an economics professor at the University of Southern Indiana. "I think he is raising a legitimate issue that most people don't want to look at because it's not an immediate bread-and-butter issue for them. They want to save a company."

Daniels was more direct. He said that while there was the practical argument of the federal government's "gift" to Chrysler not being made, "I don't know how anyone could disagree with the principle of what he was doing."

"It was wrong for the federal government in a political payoff to take money from retired teachers and cops," Daniels said.

Democratic critics, he said, "should be more concerned about the millions of money stolen from our retirees."

Murdock and the Indiana funds' New York-based lawyers raised two points in their

challenge.

First, they said secured debtholders such as themselves, who in ordinary bankruptcy proceedings must be the first paid off, were unfairly getting a worse deal than unsecured creditors such as the United Auto Workers union.

More broadly, they argued the White House lacked the authority to use Troubled Assets Relief Program, or TARP, money earmarked for "financial institutions" to give Chrysler billions of dollars in loans – an argument with ramifications in the much-bigger General Motors bankruptcy as well.

The Indiana funds bought \$42.5 million in Chrysler bonds last year at the distressed price of about \$17 million. A year later, bondholders who control \$6.9 million in Chrysler's secured debt will now receive \$2 billion to divide up.

Therefore, the Indiana funds are receiving 29 cents on the dollar for the \$42.5 million in bonds they bought – or, using a barometer Chrysler calls more accurate, 72 cents on the dollar since they bought their bonds at the lower price. Overall, the Indiana funds will get back \$12.2 million of the \$17 million they invested.

Arthur Gonzalez, the Chrysler bankruptcy judge, ruled that the Indiana funds didn't have legal standing to challenge the deal because they would've received even less if Chrysler wasn't rescued.

Gonzalez said if the company liquidated, secured bondholders would have had only \$800 million to divide up. He ruled that since the Indiana funds would be worse off if the deal fell through, they lacked standing because they weren't being harmed in the proceedings.

Murdock said that low valuation was inaccurate – a figure that came due to the White House controlling Chrysler for some time and bankruptcy proceedings he called "of the government, by the government, for the government."

"You cannot have a fair valuation of assets when one party is sitting on both sides of the table," he said.

Murdock's objection is that the 29 cents on the dollar figure is less than the 55 percent of its equity Chrysler will hand over to the United Auto Workers, which owned unsecured debt in the form of pension payments owed to retirees and more.

In effect, Mourdock is right: unsecured creditors are getting a better deal than secured creditors. But technically, the Chrysler bankruptcy skirts long-standing requirements that secured creditors be paid off first. The United Auto Workers won't get its 55 percent until after Chrysler's sale is done.

The state funds' losses raise the question: Was investing in Chrysler last year wise in the first place?

Mahoney says the move made sense. Chrysler was struggling, but "at that point very few people thought it would go downhill as fast as it did," he said. Meanwhile, centuries of law established that secured debtors such as the Indiana funds would indeed be the first to receive value.

Murdock acknowledges there was an element of risk to the investments, but said they were made with the understanding that the Indiana funds would be first in line in a bankruptcy.

"Well, duh," Murdock said. "What kind of idiot would ever buy an investment if they knew the company was going into bankruptcy. At the time these investments were purchased, Chrysler was starting to rebound."

Daniels called the investments "very conservative."

"Here's the irony. These three Indiana funds did what seemed prudent and also patriotic. They loaned money to a desperately struggling company. But they had security. They had collateral for it," Daniels said.

"This appeared about the safest, most prudent investment they could make."

The Indiana funds hold less than 1 percent of the company's secured debt, which raises the question of why it was Murdock, and not larger secured debtholders, who spearheaded the challenge.

But 92 percent of the secured creditors were major financial institutions who themselves were the recipients of TARP money, a fact that gives the government greater leverage over them.

Gonzalez also found that the Indiana funds lacked standing to challenge the federal government's use of TARP funds, declining to rule on Murdock's argument that TARP money is supposed to go financial institutions.

Murdock said that's a shame. TARP's language does leave some wiggle room in its definition of what makes up a financial institution eligible for funds under the law, but Murdock said he believes Congress would disagree with the White House using TARP funds in auto giants' bankruptcies since a separate bill to bail out the automotive industry failed last year. "Clearly it was not meant for automobile companies," he said.

The courts never ruled on whether or not they agreed with Murdock's arguments. They only held that the state funds did not have standing to challenge the Chrysler

bankruptcy.

"The courts ducked," Daniels said. "Not a one of them said a word about the Indiana position being wrong. They couldn't. He was in the right."

Personally, Mourdock, who drives a Chrysler-made Dodge Ram truck, said he's glad the ordeal is over.

"There's no way you can prepare for what I've been through in the last three weeks," he said. "It has been the most grueling, taxing thing."



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