**IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT**
**SANGAMON COUNTY, SPRINGFIELD, ILLINOIS**

FILED

JAN 28 2014 CTR-4

Clerk of the Circuit Court

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| GWENDOLYN A. HARRISON, GARY F. KROESCHEL, CHRISTINE M. BONDI, JULIE A. YOUNG, STEPHEN C. MITTONS, MONICA S. BUTTS, GARY L. CIACCIO, THOMAS W. TATE, JOSE M. PRADO, EDWARD F. CORRIGAN, CARYL E. WADLEY-FOY, ELLEN M. LARRIMORE, LEE A. AYERS, JAMES J. SHERIDAN, J. TODD LOUDEN, KENNETH N. DUGAN, JENNIFER L. EDWARDS, D'ANN URISH, JAMES P. HERRINGTON, TERRI L. GIFFORD, MICHAEL E. DAY, DENISE M. FUNFSINN, ELAINE G. FERGUSON, MARLENE M. KOERNER and DAVID L. BEHYMER, for themselves and on behalf of a class of all persons similarly situated, and WE ARE ONE ILLINOIS COALITION, | ) | 2014CH00048<br>Case No. ________ |
| Plaintiffs, | ) | |
| vs. | ) | |
| PATRICK QUINN, not individually but solely in his capacity as Governor of the State of Illinois, JUDY BAAR TOPINKA, not individually but solely in her capacity as Comptroller of the State of Illinois, DAN RUTHERFORD, not individually but solely in his capacity as Treasurer of the State of Illinois, TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS, BOARD OF TRUSTEES OF THE TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS, STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS, BOARD OF TRUSTEES OF THE STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS, STATE UNIVERSITIES RETIREMENT SYSTEM OF ILLINOIS, and BOARD OF TRUSTEES OF THE STATE UNIVERSITIES RETIREMENT SYSTEM OF ILLINOIS, | ) | |
| Defendants. | ) | |

## COMPLAINT FOR DECLARATORY, INJUNCTIVE AND OTHER RELIEF

Plaintiffs Gwendolyn A. Harrison, Gary F. Kroeschel, Christine M. Bondi, Julie A. Young, Stephen C. Mittons, Monica S. Butts, Gary L. Ciaccio, Thomas W. Tate, Jose M. Prado, Edward F. Corrigan, Caryl E. Wadley-Foy, Ellen M. Larrimore, Lee A. Ayers, James J. Sheridan, J. Todd Louden, Kenneth N. Dugan, Jennifer L. Edwards, D'Ann Urish, James P. Herrington, Terri L. Gifford, Michael E. Day, Denise M. Funfsinn, Elaine G. Ferguson, Marlene M. Koerner, David L. Behymer and We Are One Illinois Coalition state as follows for their Complaint against Defendants State of Illinois Governor Patrick Quinn, State of Illinois Comptroller Judy Baar Topinka, State of Illinois Treasurer Dan Rutherford, Teachers' Retirement System of the State of Illinois, Board of Trustees of the Teachers' Retirement System of the State of Illinois, State Employees' Retirement System of Illinois, Board of Trustees of the State Employees' Retirement System of Illinois, State Universities Retirement System of Illinois, and Board of Trustees of the State Universities Retirement System of Illinois:

## NATURE OF THE ACTION

1. Plaintiffs bring this action to correct the abdication by the Governor and General Assembly of the State of Illinois (the "State" or "Illinois") of their most fundamental duty – to uphold the Illinois Constitution. In failing to fulfill that duty, the Governor and General Assembly unlawfully harm hundreds of thousands of current and retired State employees and teachers and breach the trust that all Illinois citizens place in them.

2. In 1970, Illinois made a promise to its public servants. Although straightforward, Illinois did not make that promise lightly. Rather, the delegates to the 1970 Illinois Constitutional Convention purposefully crafted that promise – concerned that without it the State and other governmental entities within the State would welch on pension payments to public

employees. Thereafter, the citizens of Illinois ratified that promise and memorialized it in the 1970 Illinois Constitution.

3. Illinois unequivocally represents in its Constitution that a public employee's pension with the State is a contract that the State cannot diminish or impair:

> Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.

(Ill. Const. 1970, art. XIII, § 5) (the "Pension Clause").

4. That constitutional promise remains. Twice following adoption of the 1970 Illinois Constitution, the citizens of Illinois have had the opportunity to reexamine and change that promise as to future members of the State's pension systems. But in 1988, the citizens of Illinois reaffirmed that promise, voting against holding a constitutional convention in which to reevaluate the 1970 Illinois Constitution. And, in 2008, the citizens of Illinois again chose to forgo reexamination of the Pension Clause even though the State grappled then with the purported burden of adequate pension system funding.

5. The named individual Plaintiffs and the employees and retirees whom they represent have upheld their end of that constitutionally-protected bargain. Those Plaintiffs who are current employees teach our children, care for the sick and disabled, protect us from harm and perform myriad other essential services for Illinois and its citizens. Those Plaintiffs who already have retired similarly dedicated their careers to the men, women and children of Illinois. And, each faithfully has contributed to his or her respective pension system the substantial portion of their paychecks the Illinois pension code requires.

6. Unfortunately, the same cannot be said of the State. The State chose to forgo funding its pension systems in amounts the State now claims were needed to fully meet the

State's annuity obligations. Now, the State expects the members of those systems to carry on their backs the burden of curing the State's longstanding misconduct. Specifically, Public Act 98-0599 unlawfully strips from public servants pension amounts to which they otherwise are entitled as a matter of law, let alone fundamental fairness.

7. That is the very threat against which the Pension Clause protects.

8. The Governor and the members of the General Assembly took an oath to uphold the Constitution. They acknowledge that other options exist to remedy the State's knowing failure to adequately fund the State's pension systems. But rather than work to remedy the impact of the State's conduct in a manner that comports with their oath, complies with the Illinois Constitution and upholds the State's constitutional promise to pension system members, the Governor and General Assembly unlawfully look the other way.

9. Plaintiffs thus turn to this Court for protection and commence this action to defend their constitutionally-protected rights and protect the pensions they have earned. Plaintiffs request that the Court declare Public Act 98-0599, in its entirety, unconstitutional, void and unenforceable.

10. Prior to initiating this lawsuit, We Are One Illinois Coalition sought to reach an agreement with the State pension systems and the State that would stay implementation of Public Act 98-0599 pending a decision on whether Public Act 98-0599 is constitutional. We Are One Illinois Coalition believes that a stay would:

- alleviate the substantial administrative burden the pension systems face in implementing by June 1, 2014 the changes Public Act 98-0599 requires;

- avoid the similar, if not greater, burden, expense and confusion that will ensue when the pension systems must return their members to the status quo when Public Act 98-0599 is found unconstitutional;
- afford the systems the time they need to provide meaningful counsel to their members, a critical function the systems presently are unable to satisfy; and
- protect pension system members from the irreparable harm that is a consequence of the State's unlawful conduct.

11. The State, however, recently rejected We Are One Illinois Coalition's pre-litigation efforts. Therefore, Plaintiffs now file this Complaint and reserve the right to request an injunction that preserves the status quo by enjoining Defendants, as well as any other person or entity acting on behalf of any of Defendants or the State, from implementing Public Act 98-0599 pending a decision on the merits of this lawsuit.

12. Both retired and current State employees rely for retirement security on the full pension payments the State has promised. Personal financial commitments and planning based on the State's promise – often years in the making – now are in jeopardy. Plaintiffs thus seek entry of judgment that declares Public Act 98-0599, in its entirety, is unlawful and of no effect.

## JURISDICTION AND VENUE

13. The Court has subject matter jurisdiction over this matter which challenges Public Act 98-0599, a law of this State, as unconstitutional.

14. The Court has personal jurisdiction over each Defendant. Pursuant to 735 ILCS 5/2-2-9(a)(1), the Teachers' Retirement System of the State of Illinois ("TRS"), the State Employees' Retirement System of Illinois ("SERS"), and the State Universities Retirement System of Illinois ("SURS") and each of their respective Boards of Trustees are subject to this

Court's personal jurisdiction because this lawsuit arises from each Defendant's transaction of business in Illinois. Each pension system and Board of Trustees is also subject to this Court's personal jurisdiction pursuant to 735 ILCS 5/2-209(a)(7) because this lawsuit arises from Defendants' breach of the enforceable contractual relationship with each Plaintiff and each Class Member that the Pension Clause creates. And, pursuant to 735 ILCS 5/2-2-9(b), Governor Patrick Quinn, Comptroller Judy Baar Topinka and Treasurer Daniel Rutherford are subject to this Court's personal jurisdiction because they are elected officials of, work in, and are residents of Illinois.

15. Venue is proper in this judicial district pursuant to 735 ILCS 5/2-101 because each Defendant is established pursuant to the Pension Code of Illinois, has an office within this district or has members within this district. Further, the impact of the unlawful conduct this Complaint challenges will occur within this judicial district and throughout Illinois.

**PARTIES**

16. The individual Plaintiffs, and the current and retired Illinois public servants and teachers whom they represent, each first contributed to SERS, SURS or TRS prior to January 1, 2011. The pension formulas that apply to members of SERS, SURS and TRS who contributed to those pension systems prior to January 1, 2011 commonly is referred to as "Tier I."

17. This lawsuit does not include employees who first contributed to SERS, SURS or TRS on or after January 1, 2011 and without any previous service credit with a pension system that has reciprocal rights with SERS, SURS or TRS. Those members are subject to different pension metrics and reduced pension benefits that are embodied in Public Act 96-0899 and commonly referred to as "Tier II."

## Representative Plaintiffs Who Are SERS Members And Active Employees

18. Representative Plaintiff Gwendolyn A. Harrison has dedicated her public service career to helping the citizens of Illinois find information. For approximately 14 years, Harrison has served as a librarian for the State of Illinois. Currently, Harrison works in the library of the Illinois Secretary of State. She lives in Springfield, Illinois. Upon retirement, Harrison's SERS pension will be a significant portion of her income.

19. Representative Plaintiff Gary F. Kroeschel has dedicated his public service career to helping the citizens of Illinois in the arena of technology. For approximately 14 years, Kroeschel has served as an information systems analyst for the State of Illinois. Currently, Kroeschel works in the data center for Central Management Services for the State of Illinois. He lives in Chatham, Illinois. Upon retirement, Kroeschel's SERS pension will be a significant portion of his income.

20. Representative Plaintiff Christine M. Bondi has dedicated her public service career to helping Illinois drivers. Currently, and for approximately 28 years, Bondi has worked for the Illinois Secretary of State. Presently, she serves as a public service representative. Prior to that, Bondi provided written and road tests to automobile and truck drivers. Bondi is a member of SERS. She lives in Ontarioville, Illinois. Upon retirement, Bondi's primary source of income will be her SERS pension.

21. Representative Plaintiff Julie A. Young has dedicated her public service career to helping Illinois drivers. Currently, and for approximately 11 years, Young has worked for the Illinois Secretary of State. Presently, she serves as a Motor Vehicle Regulations Technician II, working with Illinois citizens who have some issue that affects their driver status. Young is a

member of SERS. She lives in Owaneco, Illinois. Upon her retirement, Young's primary source of income will be her SERS pension.

22. Representative Plaintiff Stephen C. Mittons has dedicated his public service career to protecting Illinois children. For approximately 19 years, Mittons has worked for the Illinois Department of Children and Family Services and he presently is a child protection investigator. Mittons is a member of SERS. He lives in Sun River Terrace, Illinois. Upon retirement, Mittons' primary source of income will be his SERS pension.

23. Representative Plaintiff Monica S. Butts has dedicated her public service career to helping Illinois drivers. Currently, and for more than 12 years, Butts has worked for the Illinois Secretary of State as a cashier. Butts is a member of SERS. She lives in Westville, Illinois. Upon retirement, Butts' SERS pension will be a significant portion of her income.

24. Representative Plaintiff Gary L. Ciaccio has dedicated his public service career to working with people who have developmental disabilities. Currently, and for approximately 33 years, Ciaccio has helped to care for and to provide a safe, secure and nurturing environment for people with mental health issues or developmental disabilities living at a facility Illinois owns and operates. Ciaccio is a member of SERS. He lives in Kankakee, Illinois. Upon retirement, Ciaccio's primary source of income will be his SERS pension.

25. Representative Plaintiff Thomas W. Tate has dedicated his public service career to working with the mentally disabled. Currently, and for approximately 34 years, Tate has served as a nurse at a facility that Illinois owns and operates, where he attends to the medical and other needs of adults who are unable to fully care for themselves. Tate is a member of SERS. He lives in Salem, Illinois. Upon retirement, Tate's primary source of income will be his SERS pension.

26. Representative Plaintiff Jose M. Prado has dedicated his public service career to working with prison inmates and maintaining public safety. For approximately 15 years, Prado has served as a corrections officer at Stateville Correctional Center, where he currently is a Correctional Sergeant. Prado is a member of SERS. He lives in Willowbrook, Illinois. Upon retirement, Prado's SERS pension will be a significant source of his income.

### Representative Plaintiffs Who Are SERS Members And Retired

27. Representative Plaintiff Edward F. Corrigan dedicated his public service career to working with prison inmates and maintaining public safety. For approximately 20 years, Corrigan served as a corrections officer at an Illinois prison. Corrigan is retired, and is a member of SERS. He lives in Pontiac, Illinois. Corrigan's primary source of income is his SERS pension.

28. Representative Plaintiff Caryl E. Wadley-Foy dedicated her public service career to supporting the mentally disabled. For approximately 32 years, Wadley-Foy served in a secretarial capacity at a facility Illinois owns and operates for the needs of developmentally disabled adults. Wadley-Foy is retired, and is a member of SERS. She lives in Bradley, Illinois. Wadley-Foy's primary source of income is her SERS pension.

### Representative Plaintiffs Who Are SURS Members And Active Employees

29. Representative Plaintiff Ellen M. Larrimore has dedicated her public service career to Illinois' higher education system. Currently, and for approximately seven years, Larrimore has served as a Library Specialist in the University Archive at Northeastern Illinois University. Larrimore is a member of SURS. She lives in Chicago, Illinois. Upon retirement, Larrimore's SURS pension will be a significant source of her retirement income.

30. Representative Plaintiff Lee A. Ayers has dedicated his public service career to medical needs of Illinois residents. Currently, and for approximately 25 years, Ayers has served as a clinical lab technician at a university medical center. Ayers is a member of SURS. He lives in Chicago, Illinois. Upon retirement, Ayers' primary source of income will be his SURS pension.

31. Representative Plaintiff James J. Sheridan has dedicated his public service career to Illinois's higher education system. Currently, and for approximately 13 years, Sheridan has maintained the facilities at Northern Illinois University. Sheridan is a member of SURS. He lives in DeKalb, Illinois. Upon retirement, Sheridan's primary source of income will be his SURS pension.

**REPRESENTATIVE PLAINTIFFS WHO ARE SURS MEMBERS AND RETIRED**

32. Representative Plaintiff J. Todd Louden dedicated his public service career to maintaining public safety. For approximately 30 years, Louden served in the Western Illinois University police force, retiring at the rank of Corporal. Louden is a member of SURS. He lives in Good Hope, Illinois. Louden's primary source of income is his SURS pension.

33. Representative Plaintiff Kenneth N. Dugan dedicated his public service career to maintaining public safety. A veteran of the United States Air Force and a former Illinois State Trooper, Dugan served for approximately 30 years as a firefighter for the University of Illinois at Urbana-Champaign fire department. Dugan is retired, and is a member of SURS. He lives in Pesotum, Illinois. Dugan's primary source of income is his SURS pension.

34. Representative Plaintiff Jennifer L. Edwards dedicated her public service career to Illinois higher education. For approximately 30 years, Edwards held various positions at the University of Illinois at Chicago, including assistants to the History Department chairperson and

the head of the Department of Pediatrics. Edwards is retired, and is a member of SURS. She lives in Chicago, Illinois. Edwards' primary source of income is her SURS pension.

### REPRESENTATIVE PLAINTIFFS WHO ARE TRS MEMBERS AND ACTIVE EMPLOYEES

35. Representative Plaintiff D'Ann Urish has dedicated her public service career to teaching Illinois children with special needs. For approximately 31 years, Urish has taught middle school children who have behavioral and learning disorders. Presently, Urish is a special education teacher at Franklin Middle School located in Springfield, Illinois. Urish is a member of TRS. She lives in Springfield, Illinois. Upon retirement, Urish's TRS pension will be a significant portion of her income.

36. Representative Plaintiff James P. Herrington has dedicated his public service career to teaching children and young adults in Illinois. Currently, and for approximately 35 years, Herrington has taught math at O'Fallon Township High School District 203. He has served as head of the O'Fallon High School math department since 1984. Since the early 1980s, Herrington also has taught math part-time at Southwestern Illinois College. Herrington is a member of TRS. Herrington also is a member of SURS; in approximately 1992, Illinois allowed Herrington to join SURS to reflect his work for Southwestern Illinois College and its students. He lives in Fairview Heights, Illinois. Upon retirement, Herrington's primary source of income will be his TRS and SURS pensions.

37. Representative Plaintiff Terri L. Gifford has dedicated her public service career to teaching Illinois children. For approximately 30 years, Gifford has taught health and physical education at various schools located in Springfield, Illinois. Presently, Gifford teaches health at Franklin Middle School located in Springfield, Illinois. Gifford is a member of TRS. She lives

in Springfield, Illinois. Upon retirement, Gifford's primary source of income will be her TRS pension.

38. Representative Plaintiff Michael E. Day has dedicated his public service career to teaching Illinois children. Currently, and for approximately 20 years, Day has taught U.S. history at O'Fallon Township High School District 203. Day is a member of TRS. He lives in O'Fallon, Illinois. Upon retirement, Day's primary source of income will be his TRS pension.

39. Representative Plaintiff Denise M. Funfsinn has dedicated her public service career to teaching Illinois children with special needs. Currently, and for most of her approximately 29-year teaching career, Funfsinn has taught special education to children with developmental disabilities. Presently, Funfsinn is a special education teacher in Earlville Community Unit School District 9. Funfsinn is a member of TRS. She lives in Mendota, Illinois. Upon retirement, Funfsinn's primary source of income will be her TRS pension.

**REPRESENTATIVE PLAINTIFFS WHO ARE TRS MEMBERS AND RETIRED**

40. Representative Plaintiff Elaine G. Ferguson dedicated her public service career to teaching Illinois children. For over 30 years, Ferguson taught school children primarily at the kindergarten and first grade level, at the Nauvoo-Colusa School District. Ferguson is retired, and is a member of TRS. She lives in Nauvoo, Illinois. Ferguson's TRS pension is a significant portion of her income.

41. Representative Plaintiff Marlene M. Koerner dedicated her public service career to teaching Illinois children. For over 30 years, Koerner was a teacher, retiring from Carterville School District Unit Number 5 as the Chair of its Social Studies Department. Koerner is retired, and is a member of TRS. She lives in Herrin, Illinois. Koerner's primary source of income is her TRS pension.

42. Representative Plaintiff David L. Behymer dedicated his public service career to teaching Illinois children. For 30 years, Behymer taught art in Colchester, Illinois to children ranging from pre-school to high school. Behymer is retired, and is a member of TRS. He lives in Rushville, Illinois. Behymer's primary source of income is his TRS pension.

**ASSOCIATIONAL PLAINTIFF WE ARE ONE ILLINOIS COALITION**

43. Plaintiff We Are One Illinois Coalition is a coalition of labor unions formed to help protect public employee pensions of hundreds of thousands of active and retired employees who are members of SERS, SURS or TRS. We Are One Illinois Coalition urged Governor Quinn and the General Assembly to work with We Are One Illinois Coalition in a meaningful, considered manner designed to lawfully resolve pension system funding issues and to avoid costly litigation. Unfortunately, Governor Quinn and the General Assembly refused, necessitating this litigation. We Are One Illinois Coalition members include: Illinois AFL-CIO; Illinois Federation of Teachers; Illinois Education Association; American Federation of State, County and Municipal Employees (AFSCME) Council 31; Service Employees International Union (SEIU) Local 73; Illinois Fraternal Order of Police State Lodge; Illinois Police Benevolent and Protective Association; Associated Fire Fighters of Illinois; Illinois Nurses Association; Laborers' International Union of North America Local 2002; Teamsters Local 700; and Teamsters Joint Council 25. We Are One Illinois Coalition has standing to represent the interests of members of SERS, SURS and TRS, regardless of whether those members are active employees or retired.

**ILLINOIS DEFENDANTS**

44. Defendant Patrick Quinn is the Governor of the State of Illinois, with an office located at 207 State House, Springfield, Illinois 62706. Pursuant to Article V, Section 8 of the

Illinois Constitution, "[t]he Governor shall have the supreme executive power, and shall be responsible for the faithful execution of the laws." Governor Quinn had an opportunity to uphold the Illinois Constitution and avoid this lawsuit. But he failed to fulfill that duty when he signed into law the legislation that became Public Law 98-0599. Plaintiffs bring this action against Governor Quinn in his official capacity.

45. Defendant Judy Baar Topinka is the State of Illinois Comptroller, with an office located at 201 State House, Springfield, Illinois 62706. Pursuant to Article V, Section 17 of the 1970 Illinois Constitution, "[t]the Comptroller, in accordance with law, shall maintain the State's central fiscal accounts, and order payments into and out of the funds held by the Treasurer." Comptroller Baar Topinka thus has responsibility for part of the process by which the Pension Systems disburse pension annuity payments to their members. Plaintiffs bring this action against Comptroller Baar Topinka in her official capacity.

46. Defendant Dan Rutherford is the Treasurer of Illinois, with an office located at 219 State House, Springfield, Illinois 62706. Pursuant to Article V, Section 18 of the 1970 Illinois Constitution, "[t]he Treasurer, in accordance with law, shall be responsible for the safekeeping and investment of monies and securities deposited with him, and for their disbursement upon order of the Comptroller." Treasurer Rutherford thus has responsibility for part of the process by which the Pension Systems disburse pension annuity payments to their members. Plaintiffs bring this action against Treasurer Rutherford in his official capacity.

47. Defendant State Employees' Retirement System of Illinois (as indicated above, "SERS") is a unit of the State that provides retirement annuities and other benefits to employees of Illinois located throughout the State. SERS states that its mission is "[t]o provide an orderly means whereby aged or disabled employees may be retired from active service, without

prejudice or hardship, and to enable the employees to accumulate reserves for themselves and their dependents for old age, disability, death and termination of employment, thus effecting economy and efficiency in the administration of State Government." (*See* https://www.srs.illinois.gov/SERS/home_sers.htm.) SERS was established by Article 14 of the Illinois pension code, 40 ILCS 5/14-101 *et seq.* SERS' headquarters is located at 2101 S. Veterans Parkway, Springfield, Illinois 62704.

48. Defendant Board of Trustees of the State Employees Retirement System of Illinois ("SERS Board") administers SERS. *See* 40 ILCS 5/14-134. The SERS Board maintains its office at SERS, 2101 S. Veterans Parkway, Springfield, Illinois 62704. Plaintiffs bring this action against the SERS Board in its official capacity as the administrator of SERS.

49. Defendant State Universities Retirement System of Illinois (as indicated above, "SURS") is a unit of the State that provides retirement annuities and other benefits to employees who work for Illinois public universities, community colleges and other affiliated state agencies throughout Illinois. SURS states that its mission is "[t]o secure and deliver the retirement benefits promised to our members." (*See* http://www.surs.com/about-surs.) SURS was established by Article 15 of the Illinois pension code, 40 ILCS 5/15-101 *et seq.* SURS' headquarters is located at 1901 Fox Drive, Champaign, Illinois 61820.

50. Defendant Board of Trustees of the State Universities Retirement System of Illinois ("SURS Board") administers SURS. *See* 40 ILCS 5/15-159. The SURS Board maintains its offices at SURS, 1901 Fox Drive, Champaign, Illinois 61820. Plaintiffs bring this action against the SURS Board in its official capacity as the administrator of SURS.

51. Defendant Teachers' Retirement System of the State of Illinois (as indicated above, "TRS") is a unit of the State that provides retirement annuities and other benefits to

Illinois teachers, administrators and other public school personnel employed outside of the City of Chicago. TRS admits that the State has "responsibility to fully fund teacher pensions annually and to keep retirement promises to TRS members." (*See* TRS Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2012, p. 7 (available at http://trs.illinois.gov/pubs/cafr/FY2012/intro.pdf ).) In that vein, TRS states that it is a "promise keeper" whose "fiduciary duty to ensure the long-term stability and strength of the system means that we must be certain that the retirement promises made by the State of Illinois to educators *are promises that can be kept for every one of our members* ... so that we can keep the pension promises made to teachers in the midst of their careers or at the start of their careers just as we have kept them for those already retired." (*Id.*, p. 8 (emphasis in the original).) TRS is established by Article 16 of the Illinois pension code, 40 ILCS 5/16-101 *et seq.* TRS' headquarters is located at 2815 West Washington, Springfield, Illinois 62702.

52. Defendant Board of Trustees of the Teachers' Retirement System of the State of Illinois ("TRS Board") administers TRS. *See* 40 ILCS 5/16-163. The TRS Board maintains its office at TRS, 2815 West Washington, Springfield, Illinois 62702. Plaintiffs bring this action against the TRS Board in its official capacity as the administrator of TRS.

## CLASS ACTION ALLEGATIONS

53. Pursuant to Section 2-801 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-801, Plaintiffs Gwendolyn Harrison, Gary Kroeschel, Christine Bondi, Julie Young, Stephen Mittons, Monica Butts, Gary Ciaccio, Thomas Tate, Jose Prado, Edward Corrigan, Caryl Wadley-Foy, Ellen Larrimore, Lee Ayers, James Sheridan, J. Todd Louden, Kenneth Dugan, Jennifer Edwards, D'Ann Urish, James Herrington, Terri Gifford, Michael Day, Denise Funfsinn, Elaine Ferguson, Marlene Koerner, and David Behymer (collectively, the "Representative Plaintiffs") bring this action on behalf of themselves and each member of SERS, SURS and TRS who first contributed to SERS, SURS or TRS prior to January 1, 2011, regardless of whether that member remains actively employed by the State, a school district or in another position that SERS, SURS or TRS covers (the "Class").

54. The constitutional challenges this Complaint encompasses pose the quintessential type of legal issues that are appropriate for resolution as a class action.

55. The members of the Class are so numerous that joinder of all members of the Class is impracticable. On information and belief, representative Plaintiffs believe there are more than 621,000 members of the Class ("Class Members"), comprised as follows:

a. 62,700 active members, approximately, of SERS who remain employed by the State or in another position that SERS covers;

b. 24,000 inactive members, approximately, of SERS who no longer are working in a position that SERS covers but who are not yet receiving their pensions;

c. 62,800 members, approximately, of SERS who have retired from active employment with the State or from another position that SERS covers;

d. 81,100 members, approximately, of SURS who remain employed by the State or in another position that SURS covers;

e. an unknown number of inactive members of SURS who no longer are working in a position that SURS covers but who are not yet receiving their pensions;

f. 45,500 members, approximately, of SURS who have retired from active employment with the State or from another position that SURS covers;

g. 162,200 active members, approximately, of TRS who remain employed by an Illinois school district or in another position that TRS covers;

h. 88,000 inactive members, approximately, of TRS who no longer are working in a position that TRS covers but who are not yet receiving their pensions; and

i. 95,000 members, approximately, of TRS who have retired from active employment with an Illinois school district or from another position that TRS covers.

56. The claims of the Representative Plaintiffs are typical of the claims of the Class Members, as the unconstitutional Public Act 98-0599 will cause each Class Member to suffer impairment of and a diminishment to the pension amount she or he would receive but for Public Act 98-0599. The claims of the Representative Plaintiffs do not depend on their status as a member of a public employee or teacher's union. Therefore, questions of fact and law common to the Class exist, which common questions predominate over questions, if any, that might only affect individual members of SERS, SURS and TRS regardless of whether a member remains in State employment, has retired or retires during the pendency of this lawsuit.

57. The Representative Plaintiffs will fairly and adequately protect the interests of the Class.

58. A class action is an appropriate method for the fair and efficient adjudication of the controversy this Complaint encompasses.

59. The Representative Plaintiffs are not aware of any difficulty that will be encountered in the management of this litigation as a class action.

## ILLINOIS SUPREME COURT RULE 19

60. This Complaint challenges the constitutionality of provisions of the Illinois Pension Code as amended by Public Act 98-0599. Accordingly, Plaintiffs will provide notice of this Complaint to the State pursuant Illinois Supreme Court Rule 19.

## FACTUAL BACKGROUND

### CONCERN THAT THE STATE WOULD WELCH ON ITS PENSION OBLIGATIONS BECAUSE IT UNDERFUNDED PENSION SYSTEMS – THE SAME SITUATION THAT EXISTS TODAY – IS THE REASON THAT ILLINOIS ADOPTED THE PENSION CLAUSE TO PROTECT ILLINOIS WORKERS

61. Although this litigation involves the unconstitutionality of Public Act 98-0599, its underpinnings involve much more than a legal question. At base, this litigation concerns an ethical and moral promise to provide a certain level of retirement security for the women and men who chose to serve Illinois and its citizens.

62. The majority of Illinois' public employees in State retirement systems are not eligible to receive Social Security, including all employees who are members of TRS and SURS and many SERS members. For many individuals, their State pension is their life savings and is all that that stands between them and poverty.

63. In 1970, the State recognized this situation and took action to assure the retirement security of these public workers. At the time of the 1970 Illinois Constitutional Convention, fifteen of the seventeen retirement systems that the Illinois Pension Code encompassed were mandatory plans, allowing the Illinois legislature to change or revoke those plans' terms. At the same time, the pension systems were no better funded than they are today.

For example, TRS, SERS, and SURS then were funded at approximately 40%, 43% and 47% levels, respectively. Concern that pension system funding issues might lead the State to abandon its pension obligations to the men and women who serve Illinois and its municipalities prompted Illinois to adopt the Pension Clause.

64. As indicated, the Pension Clause protects pension benefits, which include the criteria used to determine eligibility for a nondiscounted pension and the method by which the amount of a member's initial pension amount and subsequent yearly pension annuity is calculated:

> Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.

(Ill. Const. 1970, art. XIII, § 5.)

65. Pursuant to the Pension Clause, a member's pension benefits are guaranteed by an enforceable contract with the State that the State cannot unilaterally diminish or impair by legislation or otherwise, no matter the circumstance.

66. A public employee's contract right to the pension benefits, including the amount of pension, vests on the member's first day of membership in a State retirement system. The effective date of membership in SERS, SURS and TRS is the day on which a member begins employment in a position that is covered by SERS, SURS or TRS. A pension system member first contributes to the system on his or her first day of paid service. And, thereafter, where the State enhances those benefits, the member's right to the enhanced benefits vests upon the member's continued participation in the system following the effective date of that enhancement.

## Initial Pension Amounts Are Determined By Statutory Formulas Set Forth In Illinois' Pension Code

67. The pensions that Plaintiffs receive, or will receive upon retirement, as members of SERS, SURS and TRS are defined benefits. That is, the pension amount that a member receives over the course of his or her retirement is specified by formula set forth in Illinois' Pension Code. As such, the State is able to determine actuarially the approximate amount that each member will receive in retirement and the concomitant amount that should be contributed to each pension system each year to make sure that each member receives the annuity amount that the State promised to him or her.

68. The pensions that Illinois' public servants receive are not mere gratuities. In addition to the work each pension system member performs while serving Illinois and its residents, members contribute a substantial portion of their paychecks to their pensions. Members of TRS contribute 9.4% of their salaries to their pensions. Members of SERS contribute 8% of their salaries to their pensions if they are not covered by Social Security and 4% of their salaries if they are subject to Social Security. And, members of SURS contribute 8.0% of their salaries to their pensions.

69. Typically, a member is entitled to retire with a nondiscounted pension annuity where the member meets the minimum service credit and age requirements for eligibility. Once a member employee meets those minimum service credit and age requirements, three main factors determine the amount of the member's initial pension:

a. final average salary;

b. years of service credit; and

c. a percentage equal to 2.2% for each year of service credit for members who are not covered by Social Security and 1.67% for each year of service credit where the member receives Social Security, up to a maximum percentage.

(*See* 40 ILCS 5/16-133; 40 ILCS 5/14-108; 40 ILCS 5/15-136.)

70. Other, less common, formulas within each of SERS, SURS and TRS exist for calculating the initial pension amount of some State employees. Analysis of those less common formulas by which to calculate initial pension amounts is not needed to determine and declare that Public Act 98-0599 is unconstitutional, null and void. Public Act 98-0599 diminishes and impairs pension amounts of SERS, SURS and TRS members regardless of the formula used to calculate a member's initial pension amount.

**SERS PENSION CALCULATION PRIOR TO JUNE 1, 2014**

71. Prior to June 1, 2014, the date on which the pension calculation changes which Public Act 98-0599 imposes take effect, a member of SERS is eligible to terminate service and receive a nondiscounted annuity if she or he meets the following age and service requirements:

- Any age if the member's age plus years of service credit equal 85; or
- Age 60 with 8 years of service credit.

(*See* 40 ILCS 5/14-107.)

72. Under SERS, the final average salary is based on the highest 48 consecutive months of service within the last 120 months of service. (*See* 40 ILCS 5/14-103.12.) As indicated above, members of SERS who are not eligible for Social Security earn an initial pension amount of 2.2% per year of service credit, and members of SERS who are eligible for Social Security earn an initial pension amount of 1.67% per year of service credit. In either case, the maximum amount allowable is 75% of a member's final average salary.

73. Thus, for example, a nurse in a State-run hospital who retires prior to June 1, 2014 with a final average salary of $50,000 and 30 years of service credit and who receives Social Security would receive an initial pension annuity of $25,050 (*e.g.*, 30 years x 1.67% per year = 50.1%; 50.1% x $50,000 = $25,050).

74. Certain members of SERS who have jobs deemed particularly dangerous, such as police officers and correctional officers, are subject to an alternative formula, including an increased amount of contribution, that accounts for the likelihood that members with particularly dangerous jobs will have shorter careers. The pension impairments that Public Act 98-0599 imposes similarly impact the pension amounts of members who hold jobs the State deems particularly dangerous.

**SURS PENSION CALCULATION PRIOR TO JUNE 1, 2014**

75. Prior to June 1, 2014, the date the pension calculation changes Public Act 98-0599 imposes take effect, a member of SURS is eligible to terminate service and receive a nondiscounted annuity if she or he meets the following age and service requirements:

- Age 62 with at least 5 years of service credit;
- Age 60 with 8 years of service credit; or
- Any age with 30 years of service credit.

(*See* 40 ILCS 5/15-135.)

76. Under SURS, the calculation of the final average salary differs slightly depending on the member's salary. For hourly employees and those who receive an annual salary in installments during twelve months of each academic year, the final average salary is the 48 consecutive calendar-month period ending with the last day of final termination of employment or the average annual earnings during the four consecutive academic years of service in which

the employee's earning were the highest, whichever is greater. For all other members of SURS, the final average salary is the average annual earnings during the four consecutive academic years of service in which the member's earnings were the highest. (*See* 40 ILCS 5/15-112.)

77. As with TRS members and some SERS members, members of SURS are not eligible for Social Security. As a result, members of SURS earn an initial pension amount of 2.2% per year of service credit, up to 80% of the member's final average salary. (*See* 40 ILCS 5/15-136.)

78. Thus, for example, a university groundskeeper who retires prior to June 1, 2014 with a final average salary of $50,000 and 30 years of service credit would receive an initial pension annuity of $33,000 (*e.g.*, 30 years x 2.2% per year equals 66%; 66% x $50,000 = $33,000).

79. Certain members of SURS who have jobs deemed particularly dangerous, such as police officers and firefighters, are subject to an alternative formula, including an increased amount of contribution, that accounts for the likelihood that members with particularly dangerous jobs will have shorter careers. The pension impairments that Public Act 98-0599 imposes similarly impact the pension amounts of members who hold jobs the State deems particularly dangerous.

**TRS PENSION CALCULATION PRIOR TO JUNE 1, 2014**

80. Prior to June 1, 2014, the date on which the unlawful changes Public Act 98-0599 imposes are to take effect, a member of TRS is eligible to terminate service and receive a nondiscounted annuity if she or he meets the following age and service requirements:

- Age 62 with 5 years of service credit;
- Age 60 with 10 years of service credit;

- Age 55 with 20 years of service credit (provided employee pays for an early retirement option);
- Age 55 with 35 years of service credit; or
- If the TRS member is an employee of the State, when the employee's age plus service credit equals 85.

(*See* 40 ILCS 5/16-132.)

81. Under TRS, the final average salary is based on the average of the highest four consecutive annual salary rates within the last ten years of service. (*See* 40 ILCS 5/16-133(b).)

82. Teachers and other members of TRS are not eligible for Social Security. As a result, members of TRS earn an initial pension amount of 2.2% per year of service credit, up to 75% of the member's final average salary.

83. Thus, for example, a teacher who retires prior to June 1, 2014 with a final average salary of $50,000 and 30 years of service credit would receive an initial pension annuity of $33,000 (*e.g.*, 30 years x 2.2% per year = 66%; 66% x $50,000 = $33,000).

**SERS, SURS AND TRS MEMBERS ARE ENTITLED EACH YEAR TO A 3% AUTOMATIC ANNUITY INCREASE UNDER CURRENT PENSION LAW**

84. In addition to the initial pension amount, the Pension Code currently provides that members of SERS, SURS and TRS are entitled each year to a 3% automatic annuity increase to their pension amount, compounded. The 3% increase is effective each January 1, and the new amount serves as the base for the subsequent year's automatic annuity increase. (*See* pre-amendment 40 ILCS 5/14-114; 40 ILCS 5/15-136(d); and 40 ILCS 5/16-133.1(a).) Accordingly, for example, if a pension system member's initial annuity is $33,000, the first automatic annuity increase will be $990 ($33,000 x .03), for a total annuity of $33,990 in the second year of retirement. Thereafter, the $33,990 would serve as the base annuity amount for calculating the

next 3% automatic annuity increase (*e.g.*, $33,990 x .03 = $1,017.90), and the member's annuity amount in the third year would be $35,007.90.

85. A yearly automatic annuity increase is not a new concept. The Pension Code has provided a yearly automatic annuity increase to members of SERS, SURS and TRS since, at least, January 1, 1970 – before the 1970 Constitutional Convention that gave rise to the Pension Clause.

86. Upon information and belief, concerned about the effect of inflation on the pension amounts members receive, in August 1978 the State increased the yearly automatic annuity increase to 3%, effective with the January 1, 1979 automatic annuity increase. Upon information and belief, at the time the Consumer Price Index for all Urban Consumers ("CPI-u") was higher (*e.g.*, 1977 – 6.7%; 1978 – 9%; and 1979 – 13.3%) than the increase in the yearly automatic annuity to 3%.

87. In August 1989, the State added the compound component to the automatic annuity increase. That is, effective January 1, 1990, a member's 3% automatic annuity increase would compound each year, as described in paragraph 78 of this Complaint. Upon information and belief, the State added the compound component in an effort to stave off some of inflation's impact diminishing the value of a member's pension and to create for members with lesser pension amounts at least some hedge against poverty that inflation may cause. Upon information and belief, in 1987, 1988, 1989, for example, the CPI-u was, respectively, 4.4%, 4.4% and 4.6% and from 1970-1989 the average CPI-u was 6.265%.

88. Moreover, the compounded automatic annuity increase is a benefit for which most members have paid. Starting in 1970, TRS and SURS members have contributed each year an additional .5% of their salaries – on top of their required base contributions from salary – to fund

a portion of the automatic annuity increases to which they are entitled in retirement. (*See* 40 ILCS 5/16-152(a)(2); and 40 ILCS 5/15-157(b).)

89. Now, however, those contributions are for naught. Through its enactment of Public Act 98-0599, the State is set to undermine the retirement security it constitutionally promised and for which Plaintiffs and the class they represent paid through work and salary contributions.

**PUBLIC ACT 98-0599 AMENDS THE PENSION CODE IN SEVERAL WAYS TO EFFECT AN UNCONSTITUTIONAL DIMINISHMENT AND IMPAIRMENT OF THE PENSION AMOUNT A MEMBER RECEIVES**

90. Public Act 98-0599 amends several components of the formula currently set forth in the Pension Code, as described above, concerning eligibility for a nondiscounted annuity and the attendant pension amount a SERS, SURS and TRS member receives each year in retirement. Each change standing alone, let alone in concert, impairs and diminishes the pension amount SERS, SURS and TRS members otherwise would receive under the Pension Code had the General Assembly not enacted, or had the Governor not signed into law, Public Act 98-0599.

**PUBLIC ACT 98-0599 DIMINISHES AND IMPAIRS AUTOMATIC ANNUAL INCREASES**

91. First, Public Act 98-0599 diminishes and impairs the annual automatic annuity increase to which each SERS, SURS and TRS member is entitled, whether the member already is retired or hereafter retires. As indicated above, currently each SERS, SURS and TRS member is entitled to a 3% annual annuity increase, compounded.

92. But starting with the annual annuity increase that will be made on January 1, 2015, the annual annuity increase for each SERS, SURS and TRS member will be the lesser of 3% of the member's (a) base annuity amount, (b) the number of years of the member's service at retirement multiplied by $1000 if the member employee does not receive Social Security, and (c) the number of years of the member's service at retirement multiplied by $800 if the member

receives Social Security. (*See*, respectively, Public Act 98-0599's amendments to 40 ILCS 5/14-114(a-1); 40 ILCS 5/15-136(d-1); and 40 ILCS 5/16-133.1(a-1).) Each year thereafter, beginning with automatic annuity adjustments granted on January 1, 2016, the $800 or $1000 multiplier will be indexed and increase by the CPI-u for the 12 months ending the September prior to the increase.

93. For example, under the Pension Code prior to Public Act 98-0599, if a member has an initial pension amount of $33,000 after retiring before July 1, 2014 with 30 years service credit, her first automatic annual increase on January 1, 2015, would be $990 (*e.g.* $33,000 x .03).

94. Under Public Act 99-0599, in contrast, her January 1, 2015 automatic annual increase would be $900 (*e.g.*, 30 x $1000 x .03) if she is not covered by Social Security or $720 (*e.g.*, 30 x $800 x .03) if she is covered by Social Security.

95. Thereafter, the CPI-u is taken into consideration somewhat when calculating her subsequent automatic annuity increases. For example, if the CPI-u ending September 2015 for the prior 12 months equals 3%, the $1000 multiplier would be increased by $30 (*e.g.*, $1000 x .03) to $1030 and the $800 multiplier would be increased by $24 (*e.g.*, $800 x .03) to $824. In turn, her January 1, 2016 automatic annual increase would be $927 (*e.g.*, 30 x $1030 x .03) if she is not covered by Social Security or $741.60 (*e.g.*, 30 x $824 x .03) if she is covered by Social Security. Thus, her pension for 2016 would be $34,827 ($33,900 + $927) if she is not covered by Social Security or $34,461.60 ($33,720 + 741.60) if covered by Social Security.

96. In stark contrast, in this example were her automatic annuity increase for 2016 calculated under law in effect prior to Public Act 98-0599, the member would receive an automatic annual increase of $1,019.70 for a pension in 2016 of $35,009.70. With each passing

year, the gap between the automatic annuity increase the member would have received under the formula in place prior to Public Act 98-0599 and the automatic annuity increase that the member will receive under Public Act 98-0599 increases. Stated otherwise, the degree of diminishment and impairment caused by the change in the pension formula will increase with each passing year.

97. A member with an annuity that is less than his or her years of service multiplied by the applicable $1000 or $800 multiplier will receive a 3% automatic annuity adjustment compounded each year until the annuity reaches the maximum annuity to which the 3% automatic annuity adjustment compounded applies. Thereafter, the member would be subject to the same impairing and diminishing formula for the automatic annuity increase that Public Act 98-0599 imposes immediately on every other member of the class.

**PUBLIC ACT 98-0599 DIMINISHES AND IMPAIRS PENSION BENEFITS BY REQUIRING MEMBERS TO MISS AUTOMATIC ANNUITY INCREASES**

98. Public Act 98-0599 also diminishes and impairs pension benefits by requiring pension system members who retire on or after July 1, 2014 to miss certain automatic annuity increase adjustments. Depending on a member's age as of June 1, 2014, the member will have at least one and up to five annual adjustments skipped, as follows:

- Age 50 or over, the second automatic annuity increase is skipped;
- Age 47 to under age 50, the second, fourth and sixth automatic annuity increases are skipped;
- Age 44 to under age 47, the second, fourth, sixth and eighth automatic annuity increases are skipped; and
- Age 43 and under, the second, fourth, sixth, eighth and tenth automatic annuity increases are skipped.

(*See* Public Act 98-0599's amendments to 40 ILCS 5/14-114(a-2); 40 ILCS 5/15-136(d-2); and 40 ILCS 5/16-133.1(a-2).)

99. As with the change in the formula used to calculate the automatic annual increase itself, the degree of diminishment and impairment to a pension system member's benefits caused by skipping one or more automatic annual increases will increase with each passing year.

## PUBLIC ACT 98-0599 IMPOSES A LIMITATION ON PENSIONABLE SALARY EARNINGS

100. Prior to Public Act 98-0599, there is no limitation in the Pension Code on the amount of salary that a member of SERS, SURS or TRS earns in determining the member's final average salary. For instance, if a member's final average salary is $125,000, then $125,000 would be used in the final average earnings formula to calculate the member's initial annuity amount.

101. Public Act 98-0599, in contrast, imposes a cap on pensionable salary.

102. For members of SERS, that limitation is the greater of (a) the pensionable salary cap Illinois imposes on Tier II SERS members ($110,631 in 2014), (b) the annualized compensation of the member as of the effective date of Public Act 98-0599, or (c) the annualized compensation of the member immediately preceding the expiration, renewal or amendment of an employment contract or collective bargaining agreement in effect on the effective date of Public Act 98-0599. (*See* Public Act 98-0599's addition of new subsection (h) to 40 ILCS 5/14-103.10.)

103. For members of SURS, that limitation is the greater of (a) the pensionable salary cap Illinois imposes on Tier II SURS members ($110,631 in 2014), (b) the annualized rate of earnings of the member as of the effective date of Public Act 98-0599, or (c) the annualized rate of earnings of the member immediately preceding the expiration, renewal or amendment of an

employment contract or collective bargaining agreement in effect on the effective date of Public Act 98-0599. (*See* Public Act 98-0599's addition of new subsection (c) to 40 ILCS 5/15-111.)

104. For members of TRS, that limitation is the greater of (a) the pensionable salary cap Illinois imposes on Tier II TRS members ($110,631 in 2014), (b) the annualized salary of the member as of the effective date of Public Act 98-0599, or (c) the annualized salary of the member immediately preceding the expiration, renewal or amendment of an employment contract or collective bargaining agreement in effect on the effective date of Public Act 98-0599. (*See* Public Act 98-0599's amendment to 40 ILCS 5/16-121.)

105. Like the preceding changes, the limitation on pensionable salary that Public Act 98-0599 imposes for those SERS, SURS and TRS members whose final average salary exceeds the applicable cap will effect a diminishment and impairment of the members' pension system benefits that will exponentially increase with each passing year.

**PUBLIC ACT 98-0599 RAISES THE AGE OF RETIREMENT A MEMBER MUST OBTAIN IN ORDER TO BE ELIGIBLE TO RECEIVE A NONDISCOUNTED ANNUITY**

106. Public Act 98-0599 increases the age at which a member may retire with a nondiscounted pension.

107. The new retirement age formula adds four months to the statutory retirement age for every year that a member is under the age of 46 at the time Public Act 98-0599 takes effect, capped at a total delay of five years. Thus a member who is on June 1, 2014:

- 31 years of age or younger is subject to a 60-month delay in retirement eligibility;
- 32 years of age is subject to a 56-month delay in retirement eligibility;
- 33 years of age is subject to a 52-month delay in retirement eligibility;
- 34 years of age is subject to a 48-month delay in retirement eligibility;

- 35 years of age is subject to a 44-month delay in retirement eligibility;
- 36 years of age is subject to a 40-month delay in retirement eligibility;
- 37 years of age is subject to a 36-month delay in retirement eligibility;
- 38 years of age is subject to a 32-month delay in retirement eligibility;
- 39 years of age is subject to a 28-month delay in retirement eligibility;
- 40 years of age is subject to a 24-month delay in retirement eligibility;
- 41 years of age is subject to a 20-month delay in retirement eligibility;
- 42 years of age is subject to a 16-month delay in retirement eligibility;
- 43 years of age is subject to a 12-month delay in retirement eligibility;
- 44 years of age is subject to an 8-month delay in retirement eligibility; and
- 45 year of age is subject to a 4-month delay in retirement eligibility.

(*See* 40 ILCS 5/14-103.107(c); 40 ILCS 5/15-135(a-3); and 40 ILCS 5/16-132(b).)

108. By making a member work longer before she or he may receive a nondiscounted annuity, Public Act 98-0599 diminishes and impairs the pension benefits the member would have received had Public Act 98-0599 not been passed by the General Assembly or signed into law by Governor Quinn.

### THE SO-CALLED STATE PENSION SYSTEM FUNDING MANDATE IS ILLUSORY

109. Public Act 98-0599 purports to require the State to follow a funding schedule that provides an annual contribution, beginning in Fiscal Year 2015, to each of SERS, SURS and TRS (as well as the General Assembly Retirement System and the Judicial Retirement System) that is equal to the sum of the actuarial amount needed to fund each pension system plus that additional amount required to fund by Fiscal Year 2044 100% of each pension system's liabilities. In Fiscal Year 2045 and each Fiscal Year thereafter, Public Act 98-0599 directs the

State to contribute that amount to each pension system needed to maintain a funding status of 100% of each pension system's liabilities.

110. The funding mandate for which Public Act 98-0599 calls, however, is no mandate at all.

111. Illinois history is replete with the successive failures of the Illinois General Assembly and Governor to make payments to the State pensions systems for which Illinois law called. For years, led by successive Governors and members of the General Assembly, including many currently in office, the State has failed to pay an actuarially-sufficient amount to fund its pension systems. All along, the State and its elected officials did so knowing that they were shortchanging the pension systems, cheating Illinois' public servants and violating the public trust.

112. In enacting Public Act 98-0599, the General Assembly and Governor Quinn failed to heed the lesson Illinois history teaches with respect to funding the State pension systems. That is, a statutory commitment to adequately fund the State pension systems is no guarantee.

113. Public Act 98-0599 is no different. The General Assembly may alter or repeal in the future the funding amounts that Public Act 98-0599 requires.

**THE DIMINISHMENT AND IMPAIRMENT OF PENSION BENEFITS THAT PUBLIC ACT 98-0599 IMPOSES IS SUBSTANTIAL**

114. As indicated, the Pension Clause does not permit the State to diminish or impair pension benefits for active employees or retirees who already are members of a State pension system, including SERS, SURS and TRS. Clearly, Public Act 98-0599 diminishes and impairs pension benefits, regardless of degree, that constitutionally cannot stand.

115. Moreover, the diminishments and impairments that Public Act 98-0599 foists on SERS, SURS and TRS members are substantial, and will grow in magnitude over the course of a

member's retirement. The diminishment and impairment each representative Plaintiff will suffer over the course of her or his retirement under Public Act 98-0599 illustrates this unconstitutional and unfair situation.

116. Gwendolyn Harrison expects to retire in 2023 with an approximate initial pension of $37,837, assuming a 3% pay increase per year over the remainder of her public service career. Upon information and belief, under Public Act 98-0599, Harrison's pension benefits will be subject to one missed automatic annuity increase and the altered formula for calculating her automatic annuity increase. As a result, if Public Act 98-0599 is implemented, Harrison will lose over the course of a 25-year retirement a cumulative pension amount of approximately $192,429. In stark contrast, from the 1% reduction in the portion of her salary that she would contribute to her pension from July 1, 2014 until the time of her anticipated retirement, Harrison would recoup only approximately $7,876.

117. Gary Kroeschel expects to retire in 2017 with an approximate initial pension of $56,096, assuming a 3% pay increase per year over the remainder of his public service career. Upon information and belief, under Public Act 98-0599, Kroeschel's pension benefits will be subject to three missed automatic annuity increases and the altered formula for calculating his automatic annuity increase. As a result, if Public Act 98-0599 is implemented, Kroeschel will lose over the course of a 25-year retirement a cumulative pension amount of approximately $394,280. In stark contrast, from the 1% reduction in the portion of his salary that he would contribute to his pension from July 1, 2014 until the time of his anticipated retirement, Kroeschel would recoup only approximately $2,998.

118. Christine Bondi expects to retire in 2017 with an approximate initial pension of $31,454, assuming a 3% pay increase per year over the remainder of her public service career.

Upon information and belief, under Public Act 98-0599, Bondi's pension benefits will be subject to one missed automatic annuity increase and the altered formula for calculating her automatic annuity increase. As a result, if Public Act 98-0599 is implemented, Bondi will lose over the course of a 25-year retirement a cumulative pension amount of approximately $64,868. In stark contrast, from the 1% reduction in the portion of her salary that she would contribute to her pension from July 1, 2014 until the time of her anticipated retirement, Bondi would recoup only approximately $3,005.

119. Julie Young expects to retire in 2030 with an approximate initial pension of $33,178, assuming a 3% pay increase per year over the remainder of her public service career. Upon information and belief, under Public Act 98-0599, Young's pension benefits will be subject to five missed automatic annuity increases, the altered formula for calculating her automatic annuity increase and a twenty-month increase in the age at which she first is eligible for a nondiscounted annuity. As a result, if Public Act 98-0599 is implemented, Young will lose over the course of a 25-year retirement a cumulative pension amount of approximately $146,255. In stark contrast, from the 1% reduction in the portion of her salary that she would contribute to her pension from July 1, 2014 until the time of her anticipated retirement, Young would recoup only approximately $9,791.

120. Stephen Mittons expects to retire in 2021 with an approximate initial pension of $57,916, assuming a 3% pay increase per year over the remainder of his public service career. Upon information and belief, under Public Act 98-0599, Mittons' pension benefits will be subject to one missed automatic annuity increase and the altered formula for calculating his automatic annuity increase. Further, Public Act 98-0599 precludes Mittons from using his reciprocal service in calculating the automatic annuity increase. As a result, if Public Act 98-

0599 is implemented, Mittons will lose over the course of a 25-year retirement a cumulative pension amount of approximately $418,089. In stark contrast, from the 1% reduction in the portion of his salary that he would contribute to his pension from July 1, 2014 until the time of his anticipated retirement, Mittons would recoup only approximately $6,162.

121. Monica Butts expects to retire in 2016 with an approximate initial pension of $10,768, assuming a 3% pay increase per year over the remainder of her public service career. Upon information and belief, under Public Act 98-0599, Butts' pension benefits will be subject to one missed automatic annuity increase and the altered formula for calculating her automatic annuity increase. As a result, if Public Act 98-0599 is implemented, Butts will lose over the course of a 25-year retirement a cumulative pension amount of approximately $11,454. In stark contrast, from the 1% reduction in the portion of her salary that she would contribute to her pension from July 1, 2014 until the time of her anticipated retirement, Butts would recoup only approximately $1,165.

122. Gary Ciaccio expects to retire in 2017 with an approximate initial pension of $31,454, assuming a 3% pay increase per year over the remainder of his public service career. Upon information and belief, under Public Act 98-0599, Ciaccio's pension benefits will be subject to one missed automatic annuity increase and the altered formula for calculating his automatic annuity increase. As a result, if Public Act 98-0599 is implemented, Ciaccio will lose over the course of a 25-year retirement a cumulative pension amount of approximately $33,590. In stark contrast, from the 1% reduction in the portion of his salary that he would contribute to his pension from July 1, 2014 until the time of his anticipated retirement, Ciaccio would recoup only approximately $1,290.

123. Thomas Tate expects to retire in 2016 with an approximate initial pension of \$51,802, assuming a 3% pay increase per year over the remainder of his public service career. Upon information and belief, under Public Act 98-0599, Tate's pension benefits will be subject to one missed automatic annuity increase and the altered formula for calculating his automatic annuity increase. As a result, if Public Act 98-0599 is implemented, Tate will lose over the course of a 25-year retirement a cumulative pension amount of approximately \$286,920. In stark contrast, from the 1% reduction in the portion of his salary that he would contribute to his pension from July 1, 2014 until the time of his anticipated retirement, Tate would recoup only approximately \$2,529.

124. Jose Prado expects to retire in 2023 with an approximate initial pension of \$46,145, assuming a 3% pay increase per year over the remainder of his public service career. Upon information and belief, under Public Act 98-0599, Prado's pension benefits will be subject to four missed automatic annuity increases, the altered formula for calculating his automatic annuity increase and a four-month increase in the age at which he first is eligible for a nondiscounted annuity. As a result, if Public Act 98-0599 is implemented, Prado will lose over the course of a 25-year retirement a cumulative pension amount of approximately \$327,882. In stark contrast, from the 1% reduction in the portion of his salary that he would contribute to his pension from July 1, 2014 until the time of his anticipated retirement, Prado would recoup only approximately \$7,446.

125. Ellen Larrimore expects to retire in 2017 with an approximate initial pension of \$10,386, assuming a 3% pay increase per year over the remainder of her public service career. Upon information and belief, under Public Act 98-0599, Larrimore's pension benefits will be subject to one missed automatic annuity increase and the altered formula for calculating her

automatic annuity increase. As a result, if Public Act 98-0599 is implemented, Larrimore will lose over the course of a 25-year retirement a cumulative pension amount of approximately \$17,846. In stark contrast, from the 1% reduction in the portion of her salary that she would contribute to her pension from July 1, 2014 until the time of her anticipated retirement, Larrimore would recoup only approximately \$1,186.

126. Lee Ayers expects to retire in 2019 with an approximate initial pension of \$53,366, assuming a 3% pay increase per year over the remainder of his public service career. Upon information and belief, under Public Act 98-0599, Ayers' pension benefits will be subject to one missed automatic annuity increase and the altered formula for calculating his automatic annuity increase. As a result, if Public Act 98-0599 is implemented, Ayers will lose over the course of a 25-year retirement a cumulative pension amount of approximately \$218,046. In stark contrast, from the 1% reduction in the portion of his salary that he would contribute to his pension from July 1, 2014 until the time of his anticipated retirement, Ayers would recoup only approximately \$3,733.

127. James Sheridan expects to retire in 2015 with an approximate initial pension of \$13,116, assuming a 3% pay increase per year over the remainder of his public service career. Upon information and belief, under Public Act 98-0599, Sheridan's pension benefits will be subject to one missed automatic annuity increase and the altered formula for calculating his automatic annuity increase. As a result, if Public Act 98-0599 is implemented, Sheridan will lose over the course of a 25-year retirement a cumulative pension amount of approximately \$13,952. In stark contrast, from the 1% reduction in the portion of his salary that he would contribute to his pension from July 1, 2014 until the time of his anticipated retirement, Sheridan would recoup only approximately \$468.

128. D'Ann Urish expects to retire in 2018 with an approximate initial pension of $69,989.25, assuming a 3% pay increase per year over the remainder of her public service career. Upon information and belief, under Public Act 98-0599, Urish's pension benefits will be subject to one missed automatic annuity increase and the altered formula for calculating her automatic annuity increase. As a result, if Public Act 98-0599 is implemented, Urish will lose over the course of a 25-year retirement a cumulative pension amount of approximately $406,832. In stark contrast, from the 1% reduction in the portion of her salary that she would contribute to her pension from July 1, 2014 until the time of her anticipated retirement, Urish would recoup only approximately $3,728.

129. James Herrington expects to retire in 2017 with an approximate initial pension of $88,321 per year, assuming a 3% pay increase per year over the remainder of his public service career. Upon information and belief, under Public Act 98-0599, Herrington's pension benefits will be subject to one missed automatic annuity increase and the altered formula for calculating his automatic annuity increase. As a result, if Public Act 98-0599 is implemented, Herrington will lose over the course of a 25-year retirement a cumulative pension amount of approximately $544,809. In stark contrast, from the 1% reduction in the portion of his salary that he would contribute to his pension from July 1, 2014 until the time of his anticipated retirement, Herrington would recoup only approximately $3,585.

130. Terri Gifford expects to retire in 2016 with an approximate initial pension of $59,818, using projected salaries as provided by the provisions of her Collective Bargaining Agreement. Upon information and belief, under Public Act 98-0599, Gifford's pension benefits will be subject to one missed automatic annuity increase and the altered formula for calculating her automatic annuity increase. As a result, if Public Act 98-0599 is implemented, Gifford will

lose over the course of a 25-year retirement a cumulative pension amount of approximately $359,904. In stark contrast, from the 1% reduction in the portion of her salary that she would contribute to her pension from July 1, 2014 until the time of her anticipated retirement, Gifford would recoup only approximately $1,748.

131. Michael Day expects to retire in 2028 with an approximate initial pension of $78,422, assuming a 3% pay increase per year over the remainder of his public service career. Upon information and belief, under Public Act 98-0599, Day's pension benefits will be subject to five missed automatic annuity increases, the altered formula for calculating his automatic annuity increase, a twelve-month increase of the age at which he is eligible for a non-discounted annuity and, depending on the amount of his salary increases, the cap on pensionable salary. As a result, if Public Act 98-0599 is implemented, Day will lose over the course of a 25-year retirement a cumulative pension amount of approximately $718,426. In stark contrast, from the 1% reduction in the portion of his salary that he would contribute to his pension from July 1, 2014 until the time of his anticipated retirement, Day would recoup only approximately $15,613.

132. Denise Funfsinn expects to retire in 2015 with an approximate initial pension of $51,409.25, assuming a 6% pay increase per year over the remainder of her public service career. Upon information and belief, under Public Act 98-0599, Funfsinn's pension benefits will be subject to one missed automatic annuity increase and the altered formula for calculating her automatic annuity increase. As a result, if Public Act 98-0599 is implemented, Funfsinn will lose over the course of a 25-year retirement a cumulative pension amount of approximately $252,473. In stark contrast, from the 1% reduction in the portion of her salary that she would contribute to her pension from July 1, 2014 until the time of her anticipated retirement, Funfsinn would recoup only approximately $788.

133. Elaine Ferguson retired under TRS and is receiving in 2014 a pension in the approximate amount of $38,414. Upon information and belief, by the time she reaches 85 years of age, Ferguson will have lost under Public act 98-0599 a cumulative pension amount of approximately $37,683 resulting from the alteration of the formula by which her automatic annuity increase is calculated. Ferguson's cumulative pension loss under Public Act 98-0599 will continue to grow over the course of her retirement.

134. Marlene Koerner retired under TRS and is receiving in 2014 a pension in the approximate amount of $43,780. Upon information and belief, by the time she reaches 85 years of age, Koerner will have lost under Public Act 98-0599 a cumulative pension amount of approximately $6,595 resulting from the alteration of the formula by which her automatic annuity increase is calculated. Koerner's cumulative pension loss under Public Act 98-0599 will continue to grow over the course of her retirement.

135. David Behymer retired under TRS and is receiving in 2014 a pension in the approximate amount of $41,809. Upon information and belief, by the time he reaches 85 years of age, Behymer will have lost under Public Act 98-0599 a cumulative pension amount of approximately $70,992 resulting from the alteration of the formula by which his automatic annuity increase is calculated. Behymer's cumulative pension loss under Public Act 98-0599 will continue to grow over the course of his retirement.

136. Edward Corrigan retired under SERS and is receiving in 2014 a pension in the approximate amount of $20,479. Upon information and belief, by the time he reaches 85 years of age, Corrigan will have lost under Public Act 98-0599 a cumulative pension amount of approximately $2,967.44 resulting from the alteration of the formula by which his automatic

annuity increase is calculated. Corrigan's cumulative pension loss under Public Act 98-0599 will continue to grow over the course of his retirement.

137. Caryl Wadley-Foy retired under SERS and is receiving in 2014 a pension in the approximate amount of $32,350. Upon information and belief, by the time she reaches 85 years of age, Wadley-Foy will have lost under Public Act 98-0599 a cumulative pension amount of approximately $92,536 resulting from the alteration of the formula by which her automatic annuity increase is calculated. Wadley-Foy's cumulative pension loss under Public Act 98-0599 will continue to grow over the course of her retirement.

138. J. Todd Louden retired under SURS and is receiving in 2014 a pension in the approximate amount of $58,665. Upon information and belief, by the time he reaches 85 years of age, Louden will have lost under Public Act 98-0599 a cumulative pension amount of approximately $654,948 resulting from the alteration of the formula by which his automatic annuity increase is calculated. Louden's cumulative pension loss under Public Act 98-0599 will continue to grow over the course of his retirement.

139. Kenneth Dugan retired under SURS and is receiving in 2014 a pension in the approximate amount of $57,095. Upon information and belief, by the time he reaches 85 years of age, Dugan will have lost under Public Act 98-0599 a cumulative pension amount of approximately $12,691 resulting from the alteration of the formula by which his automatic annuity increase is calculated. Dugan's cumulative pension loss under Public Act 98-0599 will continue to grow over the course of his retirement.

140. Jennifer Edwards retired under SURS and is receiving in 2014 a pension in the approximate amount of $34,738. Upon information and belief, by the time she reaches 85 years of age, Edwards will have lost under Public Act 98-0599 a cumulative pension amount of

approximately $82,942 resulting from the alteration of the formula by which her automatic annuity increase is calculated. Edwards' cumulative pension loss under Public Act 98-0599 will continue to grow over the course of her retirement.

141. The substantial pension diminishment and impairment attendant to implementation of Public Act 98-0599 is not, of course, limited to the named Representative Plaintiffs. Each Class Member will incur substantial diminishment and impairment, the precise degree and timing of which will depend on a Class Member's particular employment metrics.

142. Although not every active employee will be subject to each impairing and diminishing change in the formula used to calculate a member's pension amount if Public Act 98-0599 is implemented, all currently employed members of SERS, SURS and TRS will suffer a diminishment and impairment in pension amount.

143. By way of example, the following charts reflect the pension loss a prototypical currently employed SERS (both covered by Social Security and non-covered by Social Security), SURS and TRS member will suffer under Public Act 98-0599, assuming the following parameters: member retires at age 60 with 30 years of service; pension benefits are received over twenty-five years; where applicable the member incurs a penalty of ½ percent per month of early retirement in light of the increase in the eligibility retirement age; the 2014 pensionable earnings cap increases by 1.5% per year; final average salary is calculated using the salary earned over the forty-eight consecutive months prior to retirement; 2.2% formula for TRS members, where applicable; CPI-u of 3% per year; and, for 2014, the reduction in the portion of salary contributed to the member's pension is calculated on 50% of earnings in 2014:

| Pension Loss Over 25 Years For Active Employees With 2014 Earnings Of $30,000 (3% annual salary increase assumed) | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | SERS (covered) | | SERS (non-covered) | | SURS | | TRS | |
| Age | Pension Loss | Contrib. Reduc. | Pension Loss | Contrib. Reduc. | Pension Loss | Contrib. Reduc. | Pension Loss | Contrib. Reduc. |
| 55 | $16,724 | $1,791 | $22,031 | $1,791 | $22,031 | $1,791 | $22,031 | $1,791 |
| 47 | $57,861 | $4,976 | $76,225 | $4,976 | $76,225 | $4,976 | $76,225 | $4,976 |
| 44 | $80,096 | $6,378 | $105,640 | $6,378 | $145,784 | $6,378 | $145,784 | $6,378 |
| 40 | $107,062 | $8,453 | $141,040 | $8,453 | $273,887 | $8,453 | $273,887 | $8,453 |
| 37 | $116,988 | $10,178 | $154,118 | $10,178 | $371,885 | $10,178 | $371,855 | $10,178 |
| 34 | $127,838 | $12,063 | $168,409 | $12,063 | $485,620 | $12,063 | $485,620 | $12,063 |

| Pension Loss Over 25 Years For Active Employees With 2014 Earnings Of $60,000 (3% annual salary increase assumed) | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | SERS (covered) | | SERS (non-covered) | | SURS | | TRS | |
| Age | Pension Loss | Contrib. Reduc. | Pension Loss | Contrib. Reduc. | Pension Loss | Contrib. Reduc. | Pension Loss | Contrib. Reduc. |
| 55 | $85,171 | $3,581 | $129,705 | $3,581 | $129,705 | $3,581 | $129,705 | $3,581 |
| 47 | $152,908 | $9,952 | $223,749 | $9,952 | $223,749 | $9,952 | $223,749 | $9,952 |
| 44 | $191,244 | $12,757 | $274,697 | $12,757 | $335,522 | $12,757 | $335,522 | $12,757 |
| 40 | $240,689 | $16,906 | $340,978 | $16,906 | $546,328 | $16,906 | $546,328 | $16,906 |
| 37 | $263,013 | $20,356 | $372,596 | $20,356 | $709,221 | $20,356 | $709,221 | $20,356 |
| 34 | $287,397 | $24,126 | $407,154 | $24,126 | $971,238 | $24,126 | $971,238 | $24,126 |

144. As the analyses reflected in the forgoing charts and the particular circumstances of each currently employed Representative Plaintiff demonstrate, if Public Act 98-0599 is implemented the diminishment and impairment in pension amount that a member of SERS, SURS and TRS will suffer over the course of the member's retirement will vastly exceed the amount the member will recoup from the reduction of salary the member contributes to his or her pension from July 1, 2014 until his or her retirement.

145. A retired member of SERS, SURS and TRS will fare no better under Public Act 98-0599. As the circumstances particular to the retired Representative Plaintiffs demonstrates, depending on the member's particular employment metrics and the length of his or her

retirement, a retired member stands to lose tens to hundreds of thousands of dollars, or more, in pension annuities.

146. Simply put, regardless of his or her particular employment metrics, under Public Act 98-0599 each Representative Plaintiff and each Class Member will suffer a diminishment and impairment of his or her pension benefits. As such, this case now presents an actual controversy ripe for decision that Public Act 98-0599 is unconstitutional, void and unenforceable.

## CAUSES OF ACTION

### COUNT I
### VIOLATION OF THE PENSION CLAUSE OF THE ILLINOIS CONSTITUTION

147. Plaintiffs incorporate by reference Paragraphs 1 through 146 of their Complaint, as if set forth fully herein.

148. The Pension Clause of the Illinois Constitution instructs that membership in a State pension system, such as SERS, SURS and TRS, is a contract the benefits of which the State cannot diminish or impair:

> Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.

(Ill. Const. 1970, art. XIII, § 5.)

149. Each Representative Plaintiff is a member of SERS, SURS or TRS. Similarly, each Class Member is a member of SERS, SURS or TRS. As such, each Representative Plaintiff and each Class Member has an enforceable contract with his or her respective pension system the benefits of which the State cannot diminish or impair.

150. Each Representative Plaintiff and each Class Member has satisfied her or his obligations under her or his respective pension system contract.

151. The same cannot be said for the State. Public Act 98-0599 diminishes and impairs the pension amounts to which each Representative Plaintiff and each Class Member contractually, and constitutionally, is entitled.

152. The State's unilateral diminishment of its contractual obligations and impairment of the pension benefits and rights of the Representative Plaintiffs and the members of the Class Members is an illegal exercise of its sovereign powers. As such, each Defendant's implementation of Public Act 98-0599 and application of Public Act 98-0599 to the Representative Plaintiffs and the Class violates the Pension Clause of the Illinois Constitution.

153. Accordingly, Public Act 98-0599 is illegal and of no force and effect.

WHEREFORE, the Representative Plaintiffs, for themselves and on behalf of a class of persons similarly situated, and We Are One Coalition respectfully request that the Court:

(a) declare that Public Act 98-0599 violates the Pension Clause of the Illinois Constitution, is illegal and is of no force and effect;

(b) award the Representative Plaintiffs and the Class temporary, preliminary and permanent injunctive relief as necessary to implement such declaration, protect the status quo (*i.e.*, application of the Pension Code just prior to implementation of Public Act 98-0599) pending a declaration that Public Act 98-0599 is unconstitutional and of no force and effect, and protect the Representative Plaintiffs and the Class from irreparable harm;

(c) direct SERS, SURS and TRS to restore their members to their respective pension benefits, including pension amount, as if the State had not enacted Public Act 98-0599;

(d) award the Representative Plaintiffs, the Class, and We Are One Illinois Coalition the fees and costs incurred to enforce their rights, including prosecution of this lawsuit; and

(e) award the Representative Plaintiffs, the Class and We Are One Illinois Coalition such additional relief as is just and equitable.

## COUNT II
## VIOLATION OF THE CONTRACTS CLAUSE OF THE ILLINOIS CONSTITUTION

154. Plaintiffs incorporate paragraphs 1 through 146 of their Complaint as if incorporated herein by reference.

155. Plaintiffs plead Count II in the alternative to Count I.

156. The Pension Clause provides that a member of a State pension system, such as SERS, SURS or TRS, has a contractual relationship with his or her State pension system regarding her pension amount and other benefits that the State cannot diminish or impair.

157. Each Representative Plaintiff and each Class Member therefore has an enforceable contract with her or his respective State pension system regarding the member's pension amount and other retirement benefits.

158. Each Representative Plaintiff and Class Member has complied with his or obligations regarding that contract. Moreover, they rely on their respective benefits thereunder for retirement security.

159. The State, in contrast, has not complied with its contractual obligations under those contracts. The implementation of Public Act 98-0599 will diminish and impair the pension

amount each Representative Plaintiff and Class Member otherwise would obtain pursuant to his or her contract with SERS, SURS or TRS.

160. That diminishment and impairment violates the Contracts Clause of the Illinois Constitution. Specifically, the Contracts Clause instructs that the State shall pass no law that impairs the State's contractual obligations:

> No ex post facto law, or law impairing the obligation of contracts or making an irrevocable grant of special privileges or immunities, shall be passed.

(Ill. Const. 1970, art. I, § 16.) But Public Act 96-0599 materially, substantially and unilaterally diminishes and otherwise impairs the pension amount and other retirement benefits to which each Representative Plaintiff and each Class Member contractually is entitled.

161. The State's impairment of its contractual obligations to the Representative Plaintiffs and the Class Members is neither reasonable nor necessary to advance a legitimate public purpose. The State's longstanding, deliberate and willful failure to fund each of SERS, SURS and TRS with an actuarially-sufficient amount has caused the purported problem it now tries to remedy through Public Act 98-0599. And, the State has other options by which it could remedy the situation it purports to address through enactment of Public Act 98-0599 – options that do not impair its contracts with the Representative Plaintiffs and the Class Members.

162. The State's impairment of its contractual obligations to, and of the rights of, the Representative Plaintiffs and the Class Members is an illegal exercise of its sovereign powers.

163. Each Defendant's application of Public Act 98-0599 to the Representative Plaintiffs and the Class Members Plaintiffs thus violates the Contracts Clause of the Illinois Constitution.

164. Accordingly, Public Act 98-0599 is illegal and of no force or effect.

WHEREFORE, the Representative Plaintiffs, for themselves and on behalf of a class of persons similarly situated, and We Are One Coalition respectfully request that the Court:

(a) declare that Public Act 98-0599 violates the Contracts Clause of the Illinois Constitution, is illegal and is of no force and effect;

(b) award the Representative Plaintiffs and the Class temporary, preliminary and permanent injunctive relief as necessary to implement such declaration, protect the status quo (i.e., application of the Pension Code just prior to implementation of Public Act 98-0599) pending a declaration that Public Act 98-0599 is unconstitutional and of no force and effect, and protect the Representative Plaintiffs and the Class from irreparable harm;

(c) direct SERS, SURS and TRS to restore their members to their respective pension benefits, including pension amount, as if the State had not enacted Public Act 98-0599;

(d) award the Representative Plaintiffs, the Class, and We Are One Illinois Coalition the fees and costs incurred to enforce their rights, including prosecution of this lawsuit; and

(e) award the Representative Plaintiffs, the Class and We Are One Illinois Coalition such additional relief as is just and equitable.

## COUNT III
## VIOLATION OF THE TAKINGS CLAUSE OF THE ILLINOIS CONSTITUTION – DIMINISHMENT OF PENSION AMOUNTS AND OTHER RETIREMENT BENEFITS

165. Plaintiffs incorporate paragraphs 1 through 146 of their Complaint as if incorporated herein by reference.

166. Plaintiffs plead Count III in the alternative to Count I.

167. Each Representative Plaintiffs as well as each Class Member has a private, vested contractual right to, and a legitimate expectation that she or he would receive, upon retirement the pension amount and other retirement benefits for which the Pension Code provided when she or he first became a member of her or his respective State retirement system, as well as any increase in or other improvements to those benefits. The Representative Plaintiffs and the Class Members rely on those benefits as security in retirement.

168. In exchange for their vested pension and other retirement benefits, each of the individual Representative Plaintiffs and Class Members has contributed a substantial portion of her or his salary to SERS, SURS or TRS, as the Illinois Pension Code required. Further, each serves, or in the case of retired or inactive SERS, SURS or TRS members, served the State and its citizens.

169. The changes to the Pension Code that Public Act 98-0599 imposes materially and substantially diminish and otherwise impair the vested, enforceable contract rights of each of Representative Plaintiff and each Class Member to the pension amount and other retirement benefits each otherwise would receive absent Public Act 98-0599.

170. The State's diminishment of the vested, private, enforceable contract rights of each Representative Plaintiff and each Class Member is an illegal exercise of its sovereign powers.

171. The Takings Clause of the Illinois Constitution instructs:

> Private property shall not be taken or damaged for public use without just compensation as provided by law.

(Ill. Const. 1970, art. I, § 15.)

172. The State has not offered the Representative Plaintiffs or Class Members consideration that would justly compensate them for the impairment and diminishment of their

pension benefits. Public Act 98-0599 thus violates the Takings Clause of the Illinois Constitution. Public Act 98-0599 takes away, without just compensation, a substantial and material portion of the pension amount and other benefits that each of the Representative Plaintiffs and each Class Member otherwise would receive upon retirement absent Public Act 98-0599.

173. Accordingly, Public Act 98-0599 is illegal and of no force or effect.

WHEREFORE, the Representative Plaintiffs, for themselves and on behalf of a class of persons similarly situated, and We Are One Coalition respectfully request that the Court:

(a) declare that Public Act 98-0599 violates the Takings Clause of the Illinois Constitution, is illegal and is of no force and effect;

(b) award the Representative Plaintiffs and the Class temporary, preliminary and permanent injunctive relief as necessary to implement such declaration, protect the status quo (*i.e.*, application of the Pension Code just prior to implementation of Public Act 98-0599) pending a declaration that Public Act 98-0599 is unconstitutional and of no force and effect, and protect the Representative Plaintiffs and the Class from irreparable harm;

(c) direct SERS, SURS and TRS to restore their members to their respective pension benefits, including pension amount, as if the State had not enacted Public Act 98-0599;

(d) award the Representative Plaintiffs, the Class, and We Are One Illinois Coalition the fees and costs incurred to enforce their rights, including prosecution of this lawsuit; and

(e) award the Representative Plaintiffs, the Class and We Are One Illinois Coalition such additional relief as is just and equitable.

## COUNT IV
## VIOLATION OF THE TAKINGS CLAUSE OF THE ILLINOIS CONSTITUTION – FAILURE TO SUFFICIENTLY FUND EACH PENSION OR RETIREMENT SYSTEM

174. Plaintiffs incorporate paragraphs 1 through 146 of their Complaint as if incorporated herein by reference.

175. Each Representative Plaintiff and Class Member has a private, vested contractual right to, and a legitimate expectation that she or he would receive, upon retirement the pension amount and other retirement benefits for which the Pension Code provided when she or he first became a member of her or his respective State retirement system as well as any increase in or other improvements to those benefits. The Representative Plaintiffs and the Class Members rely on those benefits as security in retirement.

176. In exchange for their vested pension and other retirement benefits, each Representative Plaintiff and Class Member has contributed a substantial portion of his or her salary to SERS, SURS or TRS, as the Illinois Pension Code required. Further, each serves, or in the case of retired or inactive SERS, SURS or TRS members, served the State and its citizens.

177. The State has acknowledged that it knowingly and systematically failed to pay into each of SERS, SURS and TRS an actuarially-sufficient amount to adequately fund what SERS, SURS and TRS each need to meet their pension payment obligations. As a result, the State now contends that each of SERS, SURS and TRS cannot fully meet its obligations. The State thus intends to implement Public Act 98-0599 as a purported remedy.

178. Of course, the State has had the power, authority and ability to adequately fund each of SERS, SURS and TRS – and it still does. By voluntarily choosing not to, and now

claiming that it will not adequately fund those State pension systems absent implementation of Public Act 98-0599, the State has effected a taking of a material and substantial portion of the vested, enforceable property rights of each Representative Plaintiff and Class Member to the pension amount and other retirement benefits she or he would otherwise receive had the State allocated funds to each of SERS, SURS and TRS sufficient to meet their respective obligations to their members under the Illinois Pension Code, as it exists prior to implementation of Public Act 98-0599.

179. The Takings Clause of the Illinois Constitution instructs:

> Private property shall not be taken or damaged for public use without just compensation as provided by law.

(Ill. Const. 1970, art. I, § 15.)

180. The State has not offered the Representative Plaintiffs or Class Members consideration that would justly compensate them for impairment and diminishment of their pension benefits resulting from the State's failure to properly fund SERS, SURS and TRS. The State cannot avoid its unconstitutional taking of the private property of each Representative Plaintiff and Class Member by further breaking the law. In other words, the State cannot avoid the ramifications of its unlawful conduct through enactment and application of the Public Act 98-0599, which itself is unconstitutional.

WHEREFORE, the Representative Plaintiffs, for themselves and on behalf of a class of persons similarly situated, and We Are One Illinois Coalition respectfully request that the Court:

(a) declare that to avoid an ongoing unlawful taking of vested property rights the State must fund each of SERS, SURS and TRS with the amount those systems need to pay each Representative Plaintiff and Class Member the pension amount which she or he would receive if Public Act 98-0599 had not been enacted;

(b) award the Representative Plaintiffs and Class temporary, preliminary and permanent injunctive relief as necessary to implement such declarations, protect the status quo (*i.e.*, application of the Pension Code just prior to implementation of Public Act 98-0599) pending a declaration that Public Act 98-0599 is unconstitutional and of no force and effect and that the State must provide SERS, SURS and TRS with funds sufficient to allow them to avoid an ongoing unlawful taking, and protect the Representative Plaintiffs and the Class from irreparable harm;

(c) direct SERS, SURS and TRS to restore their members to their respective pension benefits, including pension amount, as if the State had not enacted Public Act 98-0599;

(d) award the Representative Plaintiffs, the Class, and We Are One Illinois Coalition the fees and costs incurred to enforce their rights, including prosecution of this lawsuit; and

(e) award the Representative Plaintiffs, the Class and We Are One Illinois Coalition such additional relief as is just and equitable.

**PLAINTIFFS DEMAND A TRIAL BY JURY ON ANY ISSUES WHICH ARE, OR MAY BECOME, TRIABLE BY JURY**

Dated: January 28, 2014

Respectfully submitted,

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