

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

DORIS HEATON, PAMELA KELLER, )  
KENNETH LEE, HATTIE DOYLE, JOHN )  
SAWYER III, Ed.D., LANCE LANDECK, )  
KYLE THOMPSON, and MICHAEL )  
SCHIFFMAN, on behalf of themselves and )  
a class of similarly situated persons, )

Plaintiffs, )

v. )

PAT QUINN, Governor of the State of )  
Illinois, in his official capacity, JUDY )  
BAAR TOPINKA, Comptroller of the State )  
of Illinois, in her official capacity, and THE )  
BOARD OF TRUSTEES OF THE )  
TEACHERS' RETIREMENT SYSTEM OF )  
THE STATE OF ILLINOIS, )

Defendants. )

Case No.

2013CH28406  
CALENDAR/ROOM 14  
TIME 09:00  
Class Action

**COMPLAINT FOR DECLARATORY AND OTHER RELIEF**

Doris Heaton, Pamela Keller, Kenneth Lee, Hattie Doyle, John Sawyer III, Ed.D., Lance Landeck, Kyle Thompson and Michael Schiffman, on behalf of themselves and a class of similarly situated persons, by their counsel TABET DIVITO & ROTHSTEIN LLC, respectfully state as follows:

**INTRODUCTION AND BACKGROUND**

1. The Constitution of the State of Illinois contains a guarantee relied upon by many thousands of active and retired teachers and school administrators for more than four decades. That guarantee, perhaps more so than anything else in the Illinois Constitution, was used by countless families across Illinois to plan careers, retirements and financial futures. When teachers and school administrators decided to continue educating Illinois children instead of

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transitioning to careers in the private sector or working elsewhere, when they decided where to send their children to college, and when they decided when and how to retire, they relied upon that guarantee. Many of them can recite that constitutional guarantee by heart. Its words are clear and simple:

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.

*See* Constitution of the State of Illinois, Art. XIII, § 5. This guarantee, which the people of Illinois ratified over four decades ago, has never been amended. The guarantee is commonly known as the Pension Protection Clause of the Illinois Constitution.

2. The framers of the Illinois Constitution left unmistakable evidence of their intent in drafting the Pension Protection Clause. The delegates to the Illinois Constitutional Convention debated whether to include this guarantee on July 21, 1970. Its sponsor, Delegate Henry Green, explained that “in Illinois today we have public employees who are beginning to lose faith in the ability of the state and its political subdivisions to meet these benefit payments.” Green added that, as of 1970, the unfunded accrued liabilities of public sector pension plans in Illinois had reached almost \$2.5 billion, and he added that “the General Assembly has failed to meet its commitments to finance the pension obligations on a sound basis.” Green said that the Pension Protection Clause would “guarantee” pension rights and “direct the General Assembly to take the necessary steps to fund the pension obligations.”

3. Green said to his fellow delegates, “I believe we have at least put the General Assembly on notice that these memberships are enforceable contracts and that they shall not be diminished or impaired.”

4. Green's sentiments were echoed by Delegate Helen Kinney, a co-sponsor of the Pension Protection Clause, who explained: "All we are seeking to do is to guarantee that people will have the rights that were in force at the time they entered into the agreement to become an employee, and . . . if the benefits are \$100 a month in 1971, they should be not less than \$100 a month in 1990."

5. In the ensuing debate, Delegate James Kemp added the following:

"[C]ivil service employees who retired never had their pension altered or amended, even during those trying times during the days of the Depression. . . . I would presume that the purpose of this proposal is to make certain that *irrespective of the financial condition of a municipality or even the state government*, that those persons who have worked for often substandard wages over a long period of time could at least expect to live in some kind of dignity during their golden years . . ." (emphasis added).

6. The Pension Protection Clause was approved by the Constitutional Convention and ratified by the people of Illinois.

7. Over the years, the Illinois Supreme Court has had several occasions to interpret the Pension Protection Clause. The Illinois Supreme Court's decisions have been consistent: "[T]his court has consistently invalidated amendments to the Pension Code where the result is to diminish benefits." *McNamee v. State*, 173 Ill. 2d 433, 445 (1996). That is because, under the Pension Protection Clause, the "contractual relationship" between a retirement system member and the State of Illinois is "governed by the actual terms of the Pension Code at the time the employee becomes a member of the pension system." *McNamee*, 173 Ill. 2d at 439.

8. In a strikingly similar context, the Illinois Supreme Court also has warned: "No principle of law permits us to suspend constitutional requirements for economic reasons, no matter how compelling those reasons may seem." *Jorgensen v. Blagojevich*, 211 Ill. 2d 286, 316 (2004).

9. The guarantee on which so many relied has been violated. On December 3, 2013, the General Assembly passed, and on December 5, 2013, Governor Pat Quinn signed into law, a “reform” of the Illinois pension system. That legislation was known as Senate Bill 1 and now is Public Act 98-0599. It is not true reform. It is an unapologetic violation of the Pension Protection Clause of the Illinois Constitution. Public Act 98-0599 directly diminishes and impairs the benefits of membership in a retirement system of the State.

10. Public Act 98-0599 amends the Illinois Pension Code so as to diminish pre-existing pension rights in at least three significant ways.

11. First, Public Act 98-0599 changes the formula used to calculate the cost of living adjustment (COLA) for pension annuities, so as to lessen the pension annuities that retirees currently receive and those that current employees had been promised.

12. More specifically, Public Act 98-0599 adds new language to the Pension Code which provides that, on or after the Act’s effective date, COLAs “shall be calculated as 3% of the lesser of (1) the total annuity payable at the time of the increase, including previous increases granted, or (2) \$1,000 multiplied by the number of years of creditable service upon which the annuity is based . . . .” (*See, e.g.*, the Act’s amendment to 40 ILCS 5/16-133.1.) Prior to Public Act 98-0599, the Pension Code provided for COLAs of 3% compounded annually. (*See id.*)

13. Public Act 98-0599 also provides that State retirement system members who have not begun to receive a retirement annuity before July 1, 2014, will receive no COLA at all on alternating years for varying lengths of time, depending on their age. (*See, e.g.*, the Act’s amendment to 40 ILCS 5/16-133.1.)

14. Second, Public Act 98-0599 raises the retirement age for members of certain State retirement systems on a sliding scale based upon one’s age. (*See, e.g.*, the Act’s amendment to

40 ILCS 5/16-132.) The retirement age of someone who is 45 years old on June 1, 2014, is raised by 4 months. On the other end of the spectrum, someone who is younger than 32 on June 1, 2014, will see his or her retirement age increase by 5 years. (*See id.*)

15. Third, Public Act 98-0599 imposes a new cap on the pensionable salary of members of certain State retirement systems. (*See, e.g.*, the Act's amendment to 40 ILCS 5/16-121.) That cap is the greater of: (a) the salary cap that previously applied only to members who joined the retirement system on or after January 1, 2011; (b) the member's annualized salary as of June 1, 2014; or (c) the member's annualized salary immediately preceding the expiration, renewal, or amendment of an employment contract or collective bargaining agreement in effect on June 1, 2014. (*See id.*)

16. The Teachers' Retirement System of the State of Illinois ("TRS") is one of the affected State retirement systems.

17. Even one of the legislative leaders who pushed this legislation through the General Assembly, Illinois Senate President John Cullerton, has publicly acknowledged that Public Act 98-0599 suffers from "serious constitutional problems." *See Ray Long & Monique Garcia, Illinois Lawmakers Approve Major Pension Overhaul*, Chicago Tribune, Dec. 4, 2013.

18. Many thousands of livelihoods depend on consistent enforcement of the Pension Protection Clause. Countless careers, retirements, personal investments and medical treatments have been planned in justifiable reliance not only on the promises that were made in collective bargaining agreements, employment agreements and the Illinois Pension Code, but also on the guarantee of the Pension Protection Clause.

19. In this action, Illinois educators and school administrators who have devoted their careers to public service, on behalf of themselves and a class of similarly situated persons,

respectfully ask this Honorable Court to enforce the Pension Protection Clause of the Illinois Constitution. Among other things, the plaintiffs seek a declaration that Public Act 98-0599 is void in its entirety because it violates the Pension Protection Clause of the Illinois Constitution.

### **JURISDICTION AND VENUE**

20. This court may exercise personal jurisdiction over defendants Governor Pat Quinn and Comptroller Judy Baar Topinka, pursuant to 735 ILCS 5/2-209(b), because they are residents of the State of Illinois.

21. This court may exercise personal jurisdiction over defendant Board of Trustees of TRS, pursuant to 735 ILCS 5/2-209(a)(1), because this action arises from the Board's transaction of business within Illinois. Alternatively, this court may exercise personal jurisdiction over the Board, pursuant to 735 ILCS 5/2-209(a)(7), because this action arises from the making or performance of a contract or promise substantially connected with Illinois. The Board has the capacity to be sued pursuant to 40 ILCS 5/16-171.

22. Venue is proper in the Circuit Court of Cook County pursuant to 735 ILCS 5/2-101 because defendants Governor Pat Quinn and Comptroller Judy Baar Topinka reside in Cook County.

### **PARTIES**

23. Doris Heaton is a TRS member and annuitant. Before retiring, she worked as a librarian for the Hamilton County Unit 10 School District. She retired with approximately 24 years of service credit and lives in Franklin County, Illinois.

24. Pamela Keller is a TRS member and annuitant. Before retiring, she worked as an elementary school teacher for the North Greene Unit School District No. 3 for approximately 34 years. She lives in Greene County, Illinois.

25. Kenneth Lee is a TRS member. He currently works as Superintendent of Iroquois

County Community Unit School District No. 9. He lives in Iroquois County, Illinois. He will be 38 years old on June 1, 2014.

26. Hattie Doyle is a TRS member. She currently works as Principal of New Berlin High School in New Berlin, Illinois. She lives in Sangamon County, Illinois. She will be 41 years old on June 1, 2014.

27. John Sawyer III, Ed.D., is a TRS member and annuitant. He formerly served as Superintendent of three Illinois school districts: West Harvey-Dixmoor School District #147; North Chicago Community Unit School District #187; and Sandridge School District #172. He lives in Cook County, Illinois.

28. Lance Landeck is a TRS member. He currently serves as Superintendent of Oakland Community Unit School District #5. He lives in Douglas County, Illinois. He will be 45 years old on June 1, 2014.

29. Kyle Thompson is a TRS member. He currently serves as Assistant Regional Superintendent of Regional Office of Education #11. He lives in Coles County, Illinois. He will be 31 years old on June 1, 2014.

30. Michael Schiffman is a TRS member. He currently serves as Superintendent of Dakota Community Unit School District #201. He lives in Stephenson County, Illinois. He will be 41 years old on June 1, 2014.

31. Pat Quinn is the Governor of the State of Illinois. He resides in Chicago, Cook County, Illinois.

32. Judy Baar Topinka is the Comptroller of the State of Illinois. She resides in Riverside, Cook County, Illinois.

33. The Board of Trustees of TRS is an entity created by Article 16 of the Illinois

Pension Code. It has offices in Sangamon and DuPage Counties in Illinois.

### **CLASS ALLEGATIONS**

34. Pursuant to 735 ILCS 5/2-801, the plaintiffs represent a class consisting of all individuals who are members of the Teachers' Retirement System of the State of Illinois, both retirees and active employees, who are not currently members of the Illinois Federation of Teachers or the Illinois Education Association.

35. On information and belief, the class includes thousands of individuals. The class is therefore so numerous that joinder of all members is impracticable.

36. A common question of law is common to all members of the class: namely, whether Public Act 98-0599 is unconstitutional and void. This common question predominates over any questions affecting only individual members. The vested pension rights of all members of the class will be diminished by Public Act 98-0599 unless it is found to be unconstitutional.

37. Doris Heaton, Pamela Keller, Kenneth Lee, Hattie Doyle, John Sawyer III, Ed.D., Lance Landeck, Kyle Thompson and Michael Schiffman are members of the class and will fairly and adequately protect the interests of the class.

38. The class action is an appropriate method for the fair and efficient adjudication of this controversy.

### **COUNT I CLAIM FOR DECLARATORY AND OTHER RELIEF: PUBLIC ACT 98-0599 IS UNCONSTITUTIONAL**

39. The plaintiffs repeat and reallege all the paragraphs above as though fully stated herein.

40. Public Act 98-0599 violates the Pension Protection Clause (Art. XIII, § 5) of the Illinois Constitution.



41. Public Act 98-0599 therefore is void.
42. The plaintiffs and all other members of the class that they represent will be individually and directly harmed by the implementation and enforcement of Public Act 98-0599.
43. Under Public Act 98-0599, the COLA for Doris Heaton's pension annuity will be reduced.
44. If Public Act 98-0599 is implemented, Doris Heaton's pension benefits will be diminished or impaired.
45. Under Public Act 98-0599, the COLA for Pamela Keller's pension annuity will be reduced.
46. If Public Act 98-0599 is implemented, Pamela Keller's pension benefits will be diminished or impaired.
47. Under Public Act 98-0599, the COLA for Kenneth Lee's pension annuity will be reduced.
48. Under Public Act 98-0599, Kenneth Lee's minimum retirement age will be increased.
49. Under Public Act 98-0599, Kenneth Lee's pensionable salary will be subject to a new cap.
50. If Public Act 98-0599 is implemented, Kenneth Lee's pension benefits will be diminished or impaired.
51. Under Public Act 98-0599, the COLA for Hattie Doyle's pension annuity will be reduced.
52. Under Public Act 98-0599, Hattie Doyle's minimum retirement age will be increased.

53. Under Public Act 98-0599, Hattie Doyle's pensionable salary will be subject to a new cap.
54. If Public Act 98-0599 is implemented, Hattie Doyle's pension benefits will be diminished or impaired.
55. Under Public Act 98-0599, the COLA for John Sawyer III, Ed.D.'s pension annuity will be reduced.
56. If Public Act 98-0599 is implemented, John Sawyer III, Ed.D.'s pension benefits will be diminished or impaired.
57. Under Public Act 98-0599, the COLA for Lance Landeck's pension annuity will be reduced.
58. Under Public Act 98-0599, Lance Landeck's minimum retirement age will be increased.
59. Under Public Act 98-0599, Lance Landeck's pensionable salary will be subject to a new cap.
60. If Public Act 98-0599 is implemented, Lance Landeck's pension benefits will be diminished or impaired.
61. Under Public Act 98-0599, the COLA for Kyle Thompson's pension annuity will be reduced.
62. Under Public Act 98-0599, Kyle Thompson's minimum retirement age will be increased.
63. Under Public Act 98-0599, Kyle Thompson's pensionable salary will be subject to a new cap.
64. If Public Act 98-0599 is implemented, Kyle Thompson's pension benefits will be

diminished or impaired.

65. Under Public Act 98-0599, the COLA for Michael Schiffman's pension annuity will be reduced.

66. Under Public Act 98-0599, Michael Schiffman's minimum retirement age will be increased.

67. Under Public Act 98-0599, Michael Schiffman's pensionable salary will be subject to a new cap.

68. If Public Act 98-0599 is implemented, Michael Schiffman's pension benefits will be diminished or impaired.

69. This case presents an actual controversy concerning the unconstitutionality of Public Act 98-0599. The plaintiffs and all members of the class they represent have a direct interest in that actual controversy.

70. Preliminary and permanent injunctive relief are appropriate and necessary in this case because the plaintiffs and members of the class they represent have protectable and vested pension rights that are guaranteed by the Pension Protection Clause of the Illinois Constitution, will be irreparably harmed by the implementation and enforcement of Public Act 98-0599, have no adequate remedy at law, and are likely to succeed on the merits of this case. Any weighing of the equities would mandate the issuance of preliminary and permanent injunctive relief in favor of the plaintiffs and members of the class they represent.

WHEREFORE, the plaintiffs, on behalf of themselves and a class of similarly situated persons, pray that this Honorable Court:

(a) enter a declaratory judgment, pursuant to 735 ILCS 5/2-701, that Public Act 98-0599 is unconstitutional and therefore void;

(b) award the plaintiffs preliminary and permanent injunctive relief to enjoin the implementation and enforcement of Public Act 98-0599;

(c) award money damages to the plaintiffs and the class of similarly situated persons whom they represent resulting from the implementation of Public Act 98-0599, including pre- and post-judgment interest;

(d) award reasonable attorney's fees to the plaintiffs; and

(e) award such other and further relief as the Court deems proper.

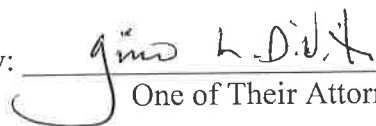
**THE PLAINTIFFS DEMAND A TRIAL BY A JURY OF TWELVE (12) ON ALL ISSUES TRIABLE BY A JURY.**

Dated: December 27, 2013

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Respectfully submitted,

DORIS HEATON, PAMELA KELLER, KENNETH LEE, HATTIE DOYLE, JOHN SAWYER III, ED.D., LANCE LANDECK, KYLE THOMPSON AND MICHAEL SCHIFFMAN, ON BEHALF OF THEMSELVES AND A CLASS OF SIMILARLY SITUATED PERSONS

By:  \_\_\_\_\_  
One of Their Attorneys