No. 13-3029

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JOHN J. CULLERTON, individually and in his official capacity as President of the Illinois Senate, and MICHAEL J. MADIGAN, individually and in his official capacity as Speaker of the Illinois House of Representatives, *Plaintiffs-Appellees*, v. PAT QUINN, Governor of the State of Illinois, in his official capacity, *Defendant-Appellant,* -and- JUDY BAAR TOPINKA, Comptroller of the State of Illinois, in her official capacity, *Defendant.*	Appeal from the Circuit Court of Cook County, Illinois, County Department, Chancery Division, No. 13 CH 17921 The Hon. Neil H. Cohen Judge Presiding

EMERGENCY MOTION BY GOVERNOR PAT QUINN
FOR STAY OF JUDGMENT PENDING APPEAL

Defendant, Governor Pat Quinn, hereby moves, pursuant to Supreme Court Rule 305(b) and Illinois Appellate Court First District Rules 5 and 6, for entry of an order immediately staying the judgment entered on September 26, 2013, in favor of the plaintiffs, John J. Cullerton and Michael J. Madigan, on Count II of their complaint. A stay is urgently needed to prevent the impending payment, without a valid appropriation and in derogation of the Governor's line-item veto, of salaries to the plaintiffs and the other members of the General Assembly. Counsel for

the Comptroller has advised that payments to legislators could be made as soon as today, September 27, 2013. Furthermore, absent a stay, the payment for October would apparently be made early next week. Particularly in light of the impracticality of recovering those payments, once they are made, from the 175 members of the General Assembly who are *not* parties to this case, issuance of an immediate stay is needed to preserve the status quo pending the decision of this appeal.

In support of his emergency motion for stay, Governor Quinn states as follows:

Nature and History of This Litigation

1. This lawsuit arises out of Governor Quinn's line-item veto of appropriations for the salaries of members of the General Assembly. The central legal issues in the case concern (a) application of the ripeness doctrine, to a dispute between the General Assembly and the Governor regarding the Governor's veto of appropriations for legislators' salaries, where the General Assembly has thus far declined to attempt to override the veto, and (b) whether a line-item veto that would otherwise be authorized by the Governor's power to veto "any item of appropriations," under article IV, section 9(d) of the Constitution, violated the restrictions on mid-term changes in legislators' salaries contained in article IV, section 11 of the Constitution.

2. The plaintiffs, John J. Cullerton and Michael J. Madigan, are the President of the Illinois Senate and the Speaker of the Illinois House of Representatives, respectively. On July 20, 2013, they commenced this action seeking declaratory and injunctive relief against Governor Quinn and Comptroller Judy Baar Topinka regarding the effect and constitutionality of Governor Quinn's line-item veto of appropriations for legislators' salaries contained in House Bill 214.

3. Count I of the plaintiffs' two-count complaint alleged that the Governor's line-item veto did not have the effect of eliminating the appropriations for the legislators' salaries because the Governor vetoed the line-item appropriations without also vetoing the totals in the appropriations bill. Count II alleged that the Governor's veto violated the provision in article IV, section 11 of the Illinois Constitution which provides that "changes in the salary of a member [of the General Assembly] shall not take effect during the term for which he has been elected."

4. The plaintiffs and Governor Quinn filed cross-motions for summary judgment on August 16, 2013, and August 30, 2013, respectively.

5. On September 26, 2013, the circuit court, the Honorable Neil H. Cohen presiding, entered an order (a) granting the plaintiffs' motion for summary judgment on Count II of the complaint and denying Governor Quinn's motion for summary judgment on Count II, and (b) granting Governor Quinn's motion for summary judgment on Count I of the complaint and denying the plaintiffs' motion for summary judgment on Count I. A copy of the circuit court's memorandum opinion and order is attached as Appendix A.

6. That same day (*i.e.*, yesterday), Governor Quinn filed a notice of appeal and an emergency motion in the circuit court for a stay of judgment pending appeal. Copies of the notice of appeal and emergency motion are attached to this motion as Appendices B and C, respectively.

7. The earliest time at which the Governor's emergency motion for stay could be heard in the circuit court was today, September 27, 2013, at 10:30 a.m. Judge Cohen denied the motion. (The Governor will provide a copy of the order denying that motion when it becomes available.) Accordingly, the Governor is seeking a stay in this Court pursuant to Supreme Court Rule 305(d).

Nature of the Emergency Requiring an Immediate Stay

8. The Governor's line-item veto that is the subject of this litigation eliminated the appropriations for the salaries and related payments to the members of the General Assembly for the current fiscal year, which began on July 1, 2013. Due to the absence of an appropriation, Comptroller Judy Baar Topinka declined to pay those salaries.

9. Following the announcement of the circuit court's decision on September 26, the Comptroller immediately began processing payments for the legislators' salaries for August, September, and October. Most of the payments will apparently be made electronically. The Comptroller issued the following statement on September 26:

> "In light of today's Court ruling, I have instructed my staff to begin processing salary payments for Illinois lawmakers. I have consistently said action was required by the General Assembly or the Court to authorize restoration of those payments. That has now occurred, and the Comptroller's Office will comply. Processing of paychecks for August, September and October begins today."

10. Counsel for the Comptroller, Chief Deputy Attorney General Brent D. Stratton, advised counsel for the Governor that payments could be made "as early as" today (September 27), although they might not be made until Monday, September 30. Mr. Stratton added that he would endeavor to obtain, before the circuit court hearing on September 27, a more definitive understanding of the timing of the impending payments. *See* Affidavit of Steven F. Pflaum (copy attached as Appendix D), ¶ 2. The Governor's counsel believe, but have been unable to confirm, that the Comptroller intends to make the August and September payments immediately, and the October payment early next week. *Id.*, ¶ 3.

11. An immediate stay is needed to preserve the status quo and the ability to effectuate the Governor's veto if he prevails on appeal. If the judgment is not stayed, the plaintiffs and the other 175 members of the General Assembly will receive payment of their legislative salaries from the Comptroller's office. Once that occurs, a ruling by this Court or the

Supreme Court that the Governor's veto was valid would to a large extent be a pyrrhic victory. It is questionable whether the 175 members of the General Assembly members who are not parties to this proceeding—this case *not* being a class action—could be compelled, in this litigation, to disgorge their salary payments. Rather, separate litigation would be required, with significant additional expense and formidable practical challenges associated with any efforts to recover the payments made to legislators.

The Legal Criteria for a Stay of Judgment Pending Appeal Are Satisfied

12. The Governor respectfully requests this Court to preserve the status quo by exercising its authority, pursuant to Supreme Court Rule 305(b), to stay the judgment pending the outcome of the Governor's appeal.

13. Rule 305(b) provides that the court may stay any non-monetary judgment, such as that entered in this case, "upon such terms as are just."

14. "Courts have inherent power to grant a stay pending appeal, and whether or not to do so is a discretionary act." *Stacke v. Bates*, 138 Ill. 2d 295, 302, 562 N.E.2d 192, 195 (1990). The primary purpose of a stay is to "preserve the status quo pending the appeal and to preserve the fruits of a meritorious appeal where they might otherwise be lost." *Id.*

15. There is no specific set of factors that applies to the decision whether to stay a judgment pending an appeal; instead, the determinative factors will vary depending on the facts of the case. *Id.* at 304-05, 562 N.E.2d at 196. Ultimately, "the movant, although not required to show a probability of success on the merits, must, nonetheless, present a substantial case on the merits and show that the balance of the equitable factors weighs in favor of granting the stay." *Id.* at 309, 562 N.E.2d at 198.

The Governor Has Established a Substantial Case on the Merits

16. There are two separate and independent reasons why the circuit court erred in granting the plaintiffs' motion for summary judgment on Count II of the complaint: first, the court erred in concluding that this case was ripe for judicial decision notwithstanding the failure of the General Assembly to attempt to override the Governor's veto; and second, the court erred in concluding that the veto was unconstitutional on the basis that article IV, section 11 of the Constitution prohibits mid-term decreases, as well as increases, in legislators' salaries. Both of these grounds for reversal present legal issues subject to *de novo* review.

17. The Governor has presented a "substantial case" with respect to the ripeness issue. Under the branch of the ripeness doctrine applicable here, courts decline to intervene in legislative disputes until the legislative process has been completed. The underlying principle is one of judicial restraint: the concept that the judicial branch will not intercede in a struggle between the legislative and executive branches, particularly if doing so would entail deciding constitutional issues, unless an impasse has been reached that makes judicial intervention absolutely necessary. *See Slack v. City of Salem*, 31 Ill. 2d 174, 178, 201 N.E.2d 119, 121 (1964) ("until the legislative process has been concluded, there is no controversy that is ripe for a declaratory judgment"); *Goldwater v. Carter*, 444 U.S. 996, 996 (1979) ("The Judicial Branch should not decide issues affecting the allocation of power between the President and Congress until the political branches reach a constitutional impasse.") (Powell, J., concurring).

18. Unlike any other government officials or private citizens who take umbrage or issue with a gubernatorial veto, the General Assembly is uniquely empowered by the Constitution to override that veto. The provisions in article IV, section 9 authorizing the exercise of gubernatorial vetoes and their override by the General Assembly are integral parts of the

legislative process. Until the constitutionally prescribed veto override process has been completed this dispute is not ripe, and once that process has been completed this dispute may become moot. *See Fletcher v. City of Paris*, 377 Ill. 89, 99, 35 N.E.2d 329, 333 (1941) (challenge to ordinance was not ripe because the ordinance had not yet "passed through all of the legislative processes necessary to give it life"); *Doe v. Bush*, 323 F.3d 133, 138 (1st Cir. 2003) (a clash between the executive and legislative branches is not ripe for judicial determination unless and until "the political branches reach a constitutional impasse").

19. The Governor has also presented a substantial case on the merits regarding the constitutionality of his veto. The circuit court erred in concluding that the Governor's authority, under article IV, section 9(d) of the Constitution, to "veto any item of appropriations" was trumped by the provision in article IV, section 11 prohibiting mid-term changes in legislators' salaries. The court based its ruling on the conclusion that article IV, section 11 prohibits mid-term decreases, as well as increases, in legislators' salaries. That interpretation conflicts with all of the following authority and considerations, none of which was addressed in the court's opinion:

a. Illinois Supreme Court decisions recognizing that gubernatorial vetoes could lawfully apply to appropriations for legislators' salaries. *See Quinn v. Donnewald*, 107 Ill. 2d 179, 191, 483 N.E.2d 216, 222 (1985) (appropriations of legislative salaries established pursuant to the Compensation Review Act were subject to the Governor's veto power over appropriations contained in article IV, section 9(d) of the Constitution); *People ex rel. Millner v. Russel*, 311 Ill. 96, 99-100, 142

N.E. 537, 538 (1924) (line-item veto power applies to appropriations for the salaries of legislators and other state officers).

b. Statements by delegates at the 1970 Constitutional Convention, including the delegate who led the consideration of article IV, section 11 at the Convention, explaining that that provision applied to mid-term *increases* in legislators' salaries. *See, e.g.*, Sixth Illinois Constitutional Convention, Record of Proceedings (July 15, 1970), p. 2705 (article IV, section 11 was intended to provide "protection against danger that . . . legislators . . . might run wild with their own salaries").

c. Repeated actions by the General Assembly evincing its understanding that article IV, section 11 only prohibits mid-term increases in their salaries. There have been at least seven instances—the last one coming just 16 days before this lawsuit was filed—in which the General Assembly has passed laws decreasing legislators' salaries. *See* P.A. 92-607; P.A. 96-45; P.A. 96-800; P.A. 96-958; P.A. 97-71; P.A. 97-718; and P.A. 98-30. These laws, several of which were sponsored by the plaintiffs, would be unconstitutional under the interpretation of article IV, section 11 espoused by the plaintiffs in this lawsuit.

d. The fact that article IV, section 11 does not prohibit all "changes" to legislators' salaries, but merely those that "take effect during the term for which [they have] been elected." Placing "changes" in context is crucial, because the absence of any reason to prevent legislators from immediately

decreasing their own salaries underscores that this provision was only intended to prevent mid-term increases.[1]

The Balance of Equities Favors Granting a Stay

20. A stay is also warranted because the status quo could not be restored if the Comptroller's impending payment of the legislators' salaries for August, September, and October is allowed to occur. As previously noted, this lawsuit is not a class action, and the practicality of recovering payments made to the other 175 members of the General Assembly following the Governor's victory on appeal is questionable. Separate litigation would be required, with significant additional expense and formidable practical challenges associated with any effort to recover payments made to legislators. This consideration weighs heavily in favor of a stay, as the public interest is served when the State is spared potentially needless administrative burden and expense. *Cf. In re J.R.*, 341 Ill. App. 3d 784, 795, 793 N.E.2d 687, 696 (1st Dist. 2003) (noting that the effect the administrative burden would have on the State's interest is an important factor in evaluating procedural due process claims).

21. Of course, if Governor Quinn prevails on appeal, the plaintiffs and the other members of the General Assembly will not have suffered any cognizable injury. Even if the plaintiffs were to prevail on appeal, any inconvenience they might experience by staying the judgment and thereby delaying their receipt of paychecks would be temporary and could be easily ameliorated by the General Assembly's own actions. If the General Assembly feels that the absence of regular salary payments during the pendency of the forthcoming expedited appeal

[1] Given the limited time before a decision is needed on the Governor's emergency motion for stay, to facilitate the Court's ability to delve into the ripeness and constitutional issues if it wishes to do so, and to enable it to consider the parties' discussion of those issues, copies of the briefs (without the attachments) filed in the trial court addressing the ripeness and constitutional issues are attached as Appendices E through H.

imposes an unacceptable financial burden, it may either: (a) override the Governor's veto at the veto session beginning on October 22, 2013, or at a special session called by the plaintiffs to be held before then; or (b) pass a new appropriations bill funding their salaries.

22. In this respect, any potential hardship the plaintiffs may experience will be short-lived and is vastly outweighed by the Pandora's Box that would be opened if the members of the General Assembly were allowed to collect their salaries prior to the final adjudication of the issues in this case concerning ripeness and the constitutionality of the Governor's veto. It would be inappropriate to allow these issues of great public importance to be effectively decided at the trial court level, but that is exactly what would occur in the absence of a stay.

Additional Considerations

23. Due to the immediate need for a stay, it may be difficult for the Court to hear from the Comptroller regarding the timing issue and from the plaintiffs regarding the merits of the motion before the motion for stay is decided. The Governor respectfully suggests that these unusual, and unusually exigent, circumstances may warrant a hearing on this motion.

24. Alternatively, the Court may wish to consider issuing an immediate stay on an interim basis pending the Court's consideration of responses to the motion for stay to be filed by a date certain.

25. The Governor also believes it appropriate to mention that, in light of the issues of great public importance involved in this lawsuit, he intends to file a motion requesting direct review by the Supreme Court pursuant to Supreme Court Rule 302(b). However, the possibility of a direct appeal to the Supreme Court should not affect the decision of the current motion given the impossibility of obtaining an immediate stay from the Supreme Court.

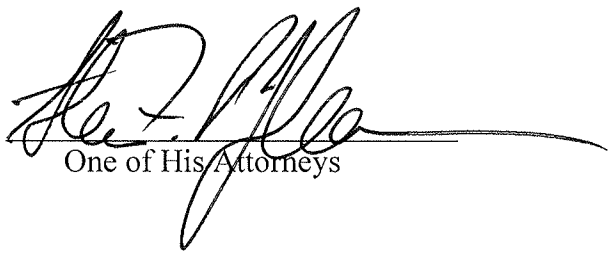
26. Finally, the Governor requests that no bond be required in connection with the stay of judgment. Supreme Court Rule 305(i) allows stays to be issued without a bond in cases, such as this, involving appeals prosecuted by "a public officer in that person's official capacity for the benefit of the public. . . ."

WHEREFORE, Governor Quinn respectfully requests that this Court enter an order staying the circuit court's judgment pending the outcome of the Governor's appeal.

Dated: September 27, 2013

Respectfully submitted,

GOVERNOR PAT QUINN

By: 
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CERTIFICATE OF SERVICE

I, Steven F. Pflaum, an attorney, hereby certify that I caused a copy of the foregoing **EMERGENCY MOTION BY GOVERNOR PAT QUINN FOR STAY PENDING APPEAL,** and the accompanying proposed **ORDER ON EMERGENCY MOTION BY GOVERNOR PAT QUINN FOR STAY OF JUDGMENT PENDING APPEAL** to be served upon:

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NGEDOCS: 2119753.1

Appendix A

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

JOHN J. CULLERTON, individually and in his capacity as President of the Illinois Senate, and MICHAEL J. MADIGAN, individually and in his capacity as Speaker of the House of the Illinois House of Representatives,	)	
Plaintiffs,	)	
v.	)	**13 CH 17921**
PAT QUINN, Governor of the State of Illinois in his official capacity, and JUDY BARR TOPINKA, Comptroller of the State of Illinois, in her official capacity,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Plaintiffs John J. Cullerton and Michael J. Madigan have filed a Motion for Summary Judgment pursuant to 735 ILCS 5/2-1005. Defendant Governor Pat Quinn has also filed a Motion for Summary Judgment.

I. Background

Plaintiff John J. Cullerton, individually and in his official capacity as President of the Illinois Senate, and Michael J. Madigan, individually and in his official capacity as Speaker of the Illinois House of Representatives, have filed a Complaint for Declaratory Judgment and Injunctive Relief against Defendants Pat Quinn, in his official capacity as Governor of the State of Illinois, and Judy Baar Topinka, in her official capacity as Comptroller of the State of Illinois.

Plaintiffs allege that on July 10, 2013, Governor Quinn exercised his line-item veto power on an appropriations bill in an attempt to entirely eliminate General Assembly members' salaries in contravention of the Illinois Constitution. Plaintiffs also contend that Governor Quinn's line-item veto did not, in fact, accomplish an elimination of the legislators' salaries as Public Act 98-64 contains a lump-sum amount for payment of these salaries.

Comptroller Topinka has declined to issue current and future salary payments to the legislators based on the purported line-item veto. She has further stated her intention not to make such payments in the future in the absence of a court order.

In Count I of their Complaint, Plaintiffs seek a declaration that Public Act 98-64 authorizes the payment of salaries to the members of the General Assembly and an order directing Comptroller Topinka to pay the full salaries due the members of the General Assembly. In Count II of their Complaint, Plaintiffs seek a declaration that Governor Quinn's line-item veto violates the Illinois Constitution and an order directing Comptroller Topinka to pay the full salaries due the members of the General Assembly.

II. Cross-Motions for Summary Judgment

The parties have filed cross-motions for summary judgment. "Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Continental Casualty Co. v. Law Offices of Melvin James Kaplan, 345 Ill. App. 3d 34, 37 (1st Dist. 2003). "When . . . parties file cross-motions for summary judgment, they concede the absence of a genuine issue of material fact and invite the court to decide the questions presented as a matter of law." Id.

A. ***Ripeness of Plaintiffs' Claims***

Governor Quinn contends that Plaintiffs' claims are not ripe for decision and, therefore, summary judgment should be granted in his favor. "The basic rationale of the ripeness doctrine is to 'prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.'" Morr-Fitz, Inc. v. Blagojevich, 231 Ill. 2d 474, 490 (2008), quoting, Abbott Laboratories v. Gardner, 387 U.S. 136, 148-49. In evaluating whether a claim is ripe, "first, courts look at whether the issues are fit for judicial decision; and second, they look at any hardship to the parties that would result from withholding judicial consideration." Id. at 490.

The Governor contends that the legislative process has not yet been completed and, therefore, Plaintiffs' claims are not yet ripe. Section Article IV, §9 of the Illinois Constitution provides in relevant part that:

> (b) If the Governor does not approve the bill, he shall veto it by returning it with his objections to the house in which it originated. Any bill not so returned by the Governor within 60 calendar days after it is presented to him shall become law. If recess or adjournment of the General Assembly prevents the return of a bill, the bill and the Governor's objections shall be filed with the Secretary of State within such 60 calendar days. The Secretary of State shall return the bill and objections to the originating house promptly upon the next meeting of the same General Assembly at which the bill can be considered.
>
> * * *
>
> (d) The Governor may reduce or veto any item of appropriations in a bill presented to him. Portions of a bill not reduced or vetoed shall become law. An item vetoed shall be

returned to the house in which it originated and may become law in the same manner as a vetoed bill. An item reduced in amount shall be returned to the house in which it originated and may be restored to its original amount in the same manner as a vetoed bill except that the required record vote shall be a majority of the members elected to each house. If a reduced item is not so restored, it shall become law in the reduced amount.

ILL. CONST. of 1970, art. IV §9.

The Governor issued his veto message on July 10, 2013. (Plaintiffs' MSJ at Ex. B). On that date, the General Assembly had already recessed for the summer. (Affidavit of Dian J. Koppang, ¶2). Under Article IV, Section 9(b), if the General Assembly is in recess when a vetoed bill is returned, the Governor's objections are considered upon the next meeting of the General Assembly. ILL. CONST. of 1970, art. IV §9(b). Therefore, the time-period for overriding the Governor's veto has yet to expire. This does not mean, however, that Plaintiffs' claims are not ripe.

The constitutionality issue raised by Count II of the Complaint is an issue fit for judicial decision. Count II alleges that the Governor violated Article IV, Section 11 of the Illinois Constitution by exercising his line-veto item in a manner which changed their salaries during their terms of office. ILL. CONST. OF 1970, art. IV §11. It is the duty of the courts to construe the Illinois Constitution and to decide whether the executive or legislative branches have disregarded its provisions in exercising their authority. Jorgensen v. Blagojevich, 211 Ill. 2d 286, 310-11 (2004).

While the General Assembly could still override Governor Quinn's veto, the dispute between the parties is not an abstract disagreement. Despite the fact that the legislative process has not been completed, Comptroller Topinka has already acted in accordance with the Governor's veto by not issuing paychecks to the General Assembly members. Whether the Governor's exercise of his line item veto was void *ab initio* as a violation of Article IV, Section 11 is a question "essentially legal in nature" which is ripe for determination. Morr-Fitz, 231 Ill. 2d at 491.

Furthermore, should this court decline to consider Plaintiffs' claims on the basis of ripeness, General Assembly members would experience hardship. The General Assembly members have already missed two paychecks. This is concrete financial harm supporting the ripeness of Plaintiffs' claims. Alternate Fuels, Inc. v. Director of Illinois E.P.A., 215 Ill. 2d 219, 233 (2004)(where government action causes a plaintiff to suffer financial loss, the plaintiff has an immediate financial stake in the resolution of the action).

Should any question remain as to the ripeness of Plaintiffs' claim, that question is answered by the procedural history of Jorgensen. In Jorgensen, the General Assembly passed an appropriation for judicial salaries and the Governor reduced the salaries through his line-item veto. 211 Ill. 2d at 291. The Illinois Supreme Court issued two orders requiring the Comptroller to process the judicial salaries at the full amount of the appropriation despite the fact that the time for overriding the Governor's reduction veto had not expired. Id. at 291-92. The Jorgensen plaintiffs then filed suit, still within the time for overriding the Governor's veto, asserting the

unconstitutionality of the Governor's reduction veto. Id. at 292-93. In deciding that the Governor's action was unconstitutional, the Illinois Supreme Court never raised any doubts as to the ripeness of the plaintiffs' claims.

Plaintiffs' claims are ripe for adjudication. The Governor is not entitled to summary judgment on this basis.

B. *Count I of the Complaint*

In Count I of the Complaint, Plaintiffs allege that Governor Quinn's exercise of his line-item veto resulted in a lump-sum appropriation for the legislators' salaries and a lump-sum appropriation for additional payments to party leaders. Plaintiffs seek a declaration that Public Act 98-64 authorizes the payment of salaries to Officers and Members of the General Assembly notwithstanding Governor Quinn's line-item veto of portions that legislation.

Section Article IV, §9 of the Illinois Constitution provides that:

> The Governor may reduce or veto any item of appropriations in a bill presented to him. Portions of a bill not reduced or vetoed shall become law. An item vetoed shall be returned to the house in which it originated and may become law in the same manner as a vetoed bill. An item reduced in amount shall be returned to the house in which it originated and may be restored to its original amount in the same manner as a vetoed bill except that the required record vote shall be a majority of the members elected to each house. If a reduced item is not so restored, it shall become law in the reduced amount.

ILL. CONST. of 1970, art. IV §9.

Governor Quinn vetoed the following text of Section 15 of House Bill 214:

For salaries of the 118 members of the House of Representatives at a base salary of $67,836.....	7,766,100
For salaries of the 59 members of the Senate at a base salary of $67,836.....	3,947,800
For the Speaker of the House, the President of the Senate and Minority Leaders of both Chambers.....	104,900
For the Majority Leader of the House.....	22,200
For the eleven assistant majority and minority leaders in the Senate.....	216,800
For the twelve assistant majority and minority leaders in the House.....	206,900
For the majority and minority caucus chairman in the Senate.....	39,500
For the majority and minority conference chairmen in the House.....	34,500

For the two Deputy Majority and the two Deputy Minority leaders in the House.....	75,600
For chairmen and minority spokesmen of standing committees in the Senate except the Committee on Assignments.....	532,000
For chairmen and minority spokesmen of standing and select committees in the House.....	906,400

(Plaintiff's MSJ, Exs. A and B). Governor Quinn did not veto the following text of Section 15 of House Bill 214:

> The following named sums, or so much thereof as may be necessary, respectively, are appropriated to the State Comptroller to pay certain officers of the Legislative Branch of the State Government, at the various rates prescribed by law:
>
> * * *
>
> Officers and Members of the General Assembly
>
> * * *
>
Total	$11,713,900
For additional amounts, as prescribed by law, for party leaders in both chambers as follows:	
* * *	
	$2,138,800

(Plaintiff's MSJ, Exs. A and B).

Plaintiff's position is that the result of the Governor's line-item veto was a lump-sum appropriation for legislators' base salaries and another lump-sum appropriation for party leaders' additional compensation. The Governor contends that his purpose and intent – to eliminate the legislators' compensation in its entirety – was clear and the method he employed was consistent with past practice of both the Governor and his predecessors as well as the General Assembly's own practices in amending bills. The Governor further contends that authority supports his position.

Initially, it is abundantly clear that all the parties involved understood that the Governor's intent in exercising his line-item veto was the elimination of the legislators' base salaries and all additional compensation for party leaders. Therefore, Plaintiffs are asking this court to disregard the Governor's plain intent and construe the Governor's line-item veto as lump-sum appropriations for the legislator's base salaries and the party leaders' additional compensation.

In People ex rel. State Board of Agriculture v. Brady, 277 Ill. 124, 125-26 (1917), the General Assembly passed an appropriations bill which contained numerous appropriations for the State Board of Agriculture ("the Board"). The Governor returned the appropriations bill to the General Assembly with his veto message expressly eliminating the majority of the items appropriated for the Board, but not vetoing the section total. Id. at 126. The Board sought a writ of mandamus directing the state auditor and the state treasurer to pay the full amount of the section total to the Board arguing that section total was the only distinct item of the appropriation and that the sub-items only signified the "direction" on how the total "should be used." Id. at 206.

In rejecting this argument, the Illinois Supreme Court stated that "the general appropriation of the total sum specifies no purpose or object" and without the specific items vetoed by the Governor, "would not be in compliance with the constitution, and to hold that [the total] was the only distinct item of the appropriation would be to nullify the power given by the constitution to the Governor to withhold his approval from distinct items." Id. at 131.

The Illinois Supreme Court further stated that "[t]he word 'item' is in common use and well understood as a separate entry in an account or schedule, or a separate particular in an enumeration of a total which is separate and distinct from the other particulars or entries." Id. The Governor vetoed particular items in the appropriations bill and those items did not become any part of the law. Id. at 132.

Nothing in Article IV, Section 9 of the Illinois Constitution requires that the Governor use a specific method to exercise his line-item veto. ILL. CONST. of 1970, art. IV, §9. Under Brady, by withholding his approval from the distinct items appropriating funds for the house members, senate members and party leaders, those distinct items have not become part of Public Act 98-64 in the absence of an override of the Governor's veto. The section totals "specif[y] no purpose or object," Brady, 277 Ill. at 131, and cannot constitute lump-sum appropriations.

The Governor is entitled to summary judgment on Count I of the Verified Complaint.

C. *Count II of the Complaint*

Plaintiffs allege that Governor Quinn's exercise of his line-item veto to eliminate their salaries was a violation of Article IV, Section 11 of the Illinois Constitution which provides that:

> A member shall receive a salary and allowances as provided by law, but changes in the salary of a member shall not take effect during the term for which he has been elected.

ILL. CONST. of 1970, art. IV, §11. Governor Quinn argues that the term "changes" refers only to increases in salaries and, therefore, there was no violation of Article IV, Section 11.

In construing a constitutional provision, a court relies on the common understanding of the voters who ratified the provision. Committee for Educ. Rights v. Edgar, 174 Ill. 2d 1, 13 (1996); Kalodimos v. Village of Morton Grove, 103 Ill. 2d 483, 492 (1984). To determine that

common understanding, a court looks to the common meaning of the words used. Committee for Educ. Rights, 174 Ill. 2d at 13. Where the meaning of the language at issue is plain and unambiguous, the language will be given effect without further construction. Id.; Maddux v. Blagojevich, 233 Ill. 2d 508, 523 (2009)("Where the words of the constitution are clear, explicit, and unambiguous, there is no need for a court to engage in construction).

Merriam Webster's Collegiate Dictionary defines "change" as "to make different in some particular: alter." MERRIAM WEBSTER'S COLLEGIATE DICTIONARY (11th ed. 2003). The New Oxford American Dictionary defines "change" as "to make or become different" and "the act or instance of making or becoming different." NEW OXFORD AMERICAN DICTIONARY (3rd ed. 2010). Therefore, under the common meaning of the word "changes," Article IV, Section 11 of the Illinois Constitution prohibits any alteration, whether an increase or a decrease, of a General Assembly member's salary during the term he or she was elected.

Governor Quinn invites this court to consider statements made during the 1970 Constitutional Convention in construing the word "changes."[1] This court declines to do so. It would only be proper to consider the debates of the 1970 Constitutional Convention if there was doubt as to the common meaning of "changes." Committee for Educ. Rights, 174 Ill. 2d at 13. There is no such doubt here. Id. at 20-21 (While statements made by delegates to the constitutional convention are useful for construing an ambiguous provision, such statements cannot transform unambiguous constitutional language).

Article IV, Section 9 of the Illinois Constitution grants the Governor authority to reduce items of appropriation. ILL. CONST. of 1970, art IV, §9. The Governor cannot, however, exercise this authority in a manner which violates another constitutional provision. Jorgensen, 211 Ill. 2d at 310-11. "The executive branch, no less than the legislative branch, is bound by the commands of our constitution." Id. at 310.

In exercising his line-item veto to change the salaries of the General Assembly members during the terms in which they were elected, the Governor violated Article IV, Section 11 of the Illinois Constitution. Therefore, the Governor's line-item veto of House Bill 214 was constitutionally void and of no effect. Jorgensen, 211 Ill. 2d at 311 ("If officials of the executive branch have exceeded their lawful authority, the courts have not hesitated and must not hesitate to say so.").

Plaintiffs are entitled to summary judgment on Count II of their Complaint.

D. Relief

Finally, Defendants argue that even if the Governor's line-item veto was void from the start, the funds that were the subject of that veto cannot be used to pay the General Assembly because that body has not yet acted upon those specific appropriations.

[1] Governor Quinn also cites to an interview given by Senator Cullerton to the State Journal-Register in 2012. Even if an ambiguity existed here, an interview given decades after the 1970 Constitutional Convention would provide no guidance in construing the provision.

Jorgensen disposed of a similar argument that judges could not be paid their COLA because there was no specific appropriation for that purpose. 211 Ill. 2d at 311. The court relied upon Antle v. Tuchbreiter, 414 Ill. 571, 581 (1953), for the proposition that "'[w]here a statute categorically commands the performance of an act, so much money as is necessary to obey the command may be disbursed without any explicit appropriation.'" Id. at 314. And further added, "[I]f that is so with respect to statutorily mandated action, it is unquestionably so with respect to actions compelled by the constitution." Id.

Here, both the "statutorily mandated action" embodied by the commands of the General Assembly Compensation Act, 25 ILCS 115/1 *et seq.*, as well as the constitutional prohibition against changing the General Assembly's midterm salaries, compel this court to order the Comptroller to: (1) immediately pay the legislators' salaries which have been due, with interest, and (2) to pay the legislators' salaries which will become due during their present term of office.

III. Conclusion

1) The Governor is granted summary judgment on Count I of the Complaint.

2) Plaintiffs are granted summary judgment on Count II of the Complaint. A declaration is entered that the Governor's line-item veto of House Bill 214 violated Article IV, Section 11 of the Illinois Constitution and therefore, was void *ab initio* and of no legal effect.

3) Comptroller Topinka is ordered to pay the members and officers of the Illinois General Assembly in accordance with Public Act 98-64 and the General Assembly Compensation Act plus interest on any amounts that have been withheld.

4) The status date of October 7, 2013 at 10:30 a.m. stands.

Enter:_____

Judge Neil H. Cohen

ENTERED
Judge Neil H. Cohen-2021
SEP 26 2013
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Appendix B

APPEAL TO THE APPELLATE COURT, FIRST DISTRICT
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

JOHN J. CULLERTON, individually and in his official capacity as President of the Illinois Senate, and MICHAEL J. MADIGAN, individually and in his official capacity as Speaker of the Illinois House of Representatives, Plaintiffs-Appellees, v. PAT QUINN, Governor of the State of Illinois, in his official capacity. Defendant-Appellant, -and- JUDY BAAR TOPINKA, Comptroller of the State of Illinois, in her official capacity. Defendant.	Case No. 13 CH 17921 Hon. Neil H. Cohen

NOTICE OF APPEAL

Defendant-Appellant, Governor Pat Quinn, hereby appeals to the Appellate Court of Illinois, First District, pursuant to Supreme Court Rule 303, from the Order of the Circuit Court of Cook County dated September 26, 2013, entering final judgment in favor of the above-captioned Plaintiffs-Appellees.

Pursuant to this appeal, Governor Quinn seeks reversal of the circuit court's September 26, 2013, order (i) granting summary judgment in favor of Plaintiffs-Appellees, and denying Governor Quinn's cross motion for summary judgment, as to Count II of the Complaint,

and (ii) ordering Comptroller Topinka to pay the members and officers of the Illinois General Assembly in accordance with Public Act 98-64 and the General Assembly Compensation Act.

DATE: September 26, 2013

Respectfully submitted,

GOVERNOR PAT QUINN

By: _____
One of His Attorneys

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Andrew G. May
Alex Hartzler
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by email and first-class, postage prepaid U.S. Mail, on September 26, 2013.

Steven F. Pflaum

NGEDOCS: 2116285.3

Appendix C

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

JOHN J. CULLERTON, individually and in his official capacity as President of the Illinois Senate, and MICHAEL J. MADIGAN, individually and in his official capacity as Speaker of the Illinois House of Representatives,	
Plaintiffs,	Case No. 13 CH 17921
v.	Hon. Neil H. Cohen
PAT QUINN, Governor of the State of Illinois, in his official capacity, and JUDY BAAR TOPINKA, Comptroller of the State of Illinois, in her official capacity,	
Defendants.	

EMERGENCY MOTION BY GOVERNOR PAT QUINN
FOR STAY OF JUDGMENT PENDING APPEAL

Defendant, Governor Pat Quinn, hereby moves, pursuant to Supreme Court Rule 305(b), for entry of an order staying enforcement of the judgment entered on September 26, 2013, in favor of the plaintiffs, John J. Cullerton and Michael J. Madigan, on Count II of their complaint. In support of this motion, Governor Quinn states as follows:

1. The plaintiffs commenced this action on July 20, 2013, seeking declaratory and injunctive relief against Governor Quinn and Comptroller Judy Baar Topinka regarding the effect and constitutionality of Governor Quinn's line-item veto of appropriations for legislators' salaries.

2. The plaintiffs and Governor Quinn filed cross motions for summary judgment on August 16, 2013, and August 30, 2016, respectively.

3. On September 26, 2013, this Court (a) granted the plaintiffs' motion for summary judgment on Count II of the complaint and denied Governor Quinn's motion for summary judgment on Count II, and (b) granted Governor Quinn's motion for summary judgment on Count I of the complaint and denied the plaintiffs' motion for summary judgment on Count I.

4. The Governor timely filed a notice of appeal on September 26, 2013. A copy of the Notice of Appeal is attached as Exhibit A.

5. In light of the issues of great public importance involved in this lawsuit, the Governor intends to file a motion, pursuant to Supreme Court Rule 302(b), requesting direct review by the Supreme Court.

6. The Governor respectfully requests that this Court exercise its authority, pursuant to Supreme Court Rule 305(b), to stay enforcement of the judgment pending the outcome of the Governor's appeal.

7. Rule 305(b) provides that the circuit court may stay the enforcement of any non-monetary judgment, such as that entered in this case, "upon such terms as are just."

8. "Courts have inherent power to grant a stay pending appeal, and whether or not to do so is a discretionary act." *Stacke v. Bates*, 138 Ill. 2d 295, 302, 562 N.E.2d 192, 195 (1990). The primary purpose of a stay is to "preserve the status quo pending the appeal and to preserve the fruits of a meritorious appeal where they might otherwise be lost." *Id.* at 302, 562 N.E.2d at 195. There is no specific set of factors that are proper when determining whether to stay a judgment pending an appeal; instead, the determinative factors will vary depending on the facts of the case. *Id.* at 304-05, 562 N.E.2d at 196. Ultimately, "the movant, although not required to show a probability of success on the merits, must, nonetheless, present a substantial case on the

merits and show that the balance of the equitable factors weighs in favor of granting the stay." *Id.* at 309, 562 N.E.2d at 198.

9. Here, although the Court did not ultimately rule in favor of the Governor on Count II, the briefs and argument offered on behalf of the Governor presented a substantial case on the merits with respect to the issues of first impression that are at the heart of this case, including (a) application of the ripeness doctrine to a dispute between the General Assembly and the Governor regarding an appropriations veto that the General Assembly has thus far declined to attempt to override, and (b) whether a line-item veto that would otherwise be authorized by the Governor's authority under article IV, section 9(d) of the Constitution to veto "any item of appropriations" violated the restrictions on mid-term changes in legislators' salaries contained in article IV, section 11 of the Constitution.

10. The balance of the equities weighs heavily in favor of granting a stay. If the judgment is not stayed, the plaintiffs and the other 175 members of the General Assembly will receive payment of their legislative salaries from the Comptroller's office. If those funds are disbursed prior to the resolution of the Governor's appeal, and this Court's judgment is ultimately reversed on appeal, it would be impractical to retrieve those public funds from each individual legislator. Not only would this present significant administrative and financial challenges, it is questionable whether the 175 members of the General Assembly members who are not parties to this proceeding could be compelled, in this litigation, to disgorge their salary payments. Rather, separate litigation would be required, with significant additional expense. This consideration weighs heavily in favor of a stay, as the public interest is served when the State is spared potentially needless administrative burden and expense. *Cf. In re J.R.*, 341 Ill. App. 3d 784, 795, 793 N.E.2d 687, 696 (1st Dist. 2003) (noting that the effect the administrative

burden would have on the State's interest is an important factor in evaluating procedural due process claims).

11. Of course, if Governor Quinn prevails on appeal, the plaintiffs and the other members of the General Assembly will not have suffered any cognizable injury. Even if the plaintiffs were to prevail on appeal, any inconvenience they might experience by delaying the enforcement of this Court's order is only temporary and could be easily ameliorated by the General Assembly's own actions. If the General Assembly feels that the absence of regular salary payments during the pendency of the forthcoming expedited appeal saddles them with an unreasonable financial burden, it may either: (a) override the Governor's veto at the veto session beginning on October 22, 2013, or at a special session called by the plaintiffs to be held before then; or (b) pass a new appropriations bill funding their salaries.

12. In this respect, any potential hardship the plaintiffs may experience will be short-lived and is vastly outweighed by the Pandora's Box that would be opened if the members of the General Assembly were allowed to collect their salaries prior to the final adjudication of the ripeness of this controversy and, if necessary, the constitutionality of the Governor's veto on appeal.

13. Pursuant to Rule 305(b), the Governor requests that the Court exercise its authority to decline to require a bond in connection with the stay. A bond is not warranted in a case, such as this, involving government officials acting in their official capacities. *See* Ill. Sup. Ct. R. 305(i).

WHEREFORE, Governor Quinn respectfully requests that this Court enter an order staying the enforcement of this Court's judgment pending the outcome of the Governor's appeal,

or, at a minimum, staying enforcement of this Court's judgment until a reviewing court has ruled on the merits of a motion to stay filed by the Governor in that court.

Dated: September 26, 2013

Respectfully submitted,

GOVERNOR PAT QUINN

By: 
One of His Attorneys

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CERTIFICATE OF SERVICE

I, Steven F. Pflaum, an attorney, hereby certify that I caused a copy of the foregoing **EMERGENCY MOTION BY GOVERNOR PAT QUINN FOR STAY PENDING APPEAL** to be served upon:

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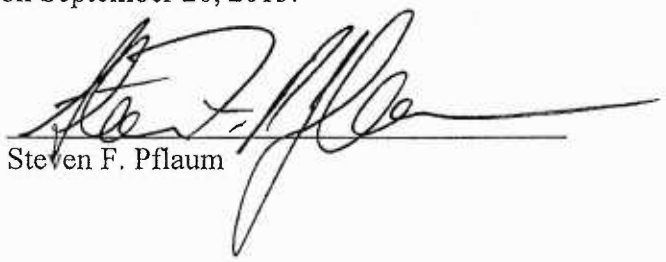
by email and first-class, postage prepaid U.S. Mail, on September 26, 2013.



Steven F. Pflaum

NGEDOCS: 2113568.3

APPEAL TO THE APPELLATE COURT, FIRST DISTRICT
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

JOHN J. CULLERTON, individually and in his official capacity as President of the Illinois Senate, and MICHAEL J. MADIGAN, individually and in his official capacity as Speaker of the Illinois House of Representatives, Plaintiffs-Appellees, v. PAT QUINN, Governor of the State of Illinois, in his official capacity. Defendant-Appellant, -and- JUDY BAAR TOPINKA, Comptroller of the State of Illinois, in her official capacity. Defendant.	Case No. 13 CH 17921 Hon. Neil H. Cohen

NOTICE OF APPEAL

Defendant-Appellant, Governor Pat Quinn, hereby appeals to the Appellate Court of Illinois, First District, pursuant to Supreme Court Rule 303, from the Order of the Circuit Court of Cook County dated September 26, 2013, entering final judgment in favor of the above-captioned Plaintiffs-Appellees.

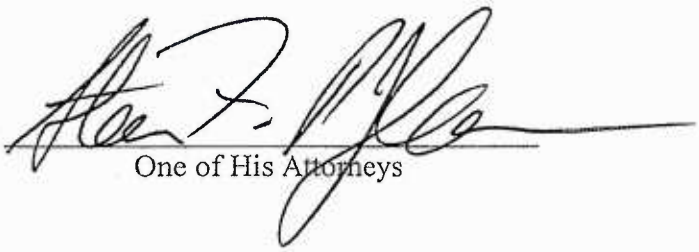
Pursuant to this appeal, Governor Quinn seeks reversal of the circuit court's September 26, 2013, order (i) granting summary judgment in favor of Plaintiffs-Appellees, and denying Governor Quinn's cross motion for summary judgment, as to Count II of the Complaint,

and (ii) ordering Comptroller Topinka to pay the members and officers of the Illinois General Assembly in accordance with Public Act 98-64 and the General Assembly Compensation Act.

DATE: September 26, 2013

Respectfully submitted,

GOVERNOR PAT QUINN

By: 
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by email and first-class, postage prepaid U.S. Mail, on September 26, 2013.

Steven F. Pflaum

NGEDOCS: 2116285.3

Appendix D

AFFIDAVIT OF STEVEN F. PFLAUM

Steven F. Pflaum avers as follows:

1. I am a member of the law firm of Neal, Gerber & Eisenberg LLP. I have been appointed a Special Assistant Attorney General for the purpose of representing Governor Pat Quinn in *Cullerton v. Quinn,* C.C.C.C. No. 13 CH 17921. I make this affidavit in support of the Emergency Motion by Governor Pat Quinn for Stay Pending Appeal. I have firsthand knowledge of, and would testify competently to, the matters stated below.

2. On September 26, 2013, I spoke by telephone with Chief Deputy Attorney General Brent D. Stratton, counsel for Comptroller Judy Baar Topinka. Mr. Stratton told me that, in response to the circuit court decision handed down earlier that afternoon, the Comptroller had begun the process for paying legislators' salaries. He said that payment could occur as early as Friday, September 27, although it was possible that payment would occur on Monday, September 30. Mr. Stratton also said that he would attempt to obtain more definitive information about the timing of the impending payments to the legislators before the September 27 hearing in the circuit court on Governor Quinn's emergency motion for stay of judgment pending appeal.

3. I am informed and believe that the Comptroller intends to make the August and September payments immediately, and to make the October payment early next week. I have sought, but not yet received, confirmation that this understanding is correct.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Dated: September 27, 2013

Steven F. Pflaum

Appendix E

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

JOHN J. CULLERTON, individually and in his official capacity as President of the Illinois Senate, and MICHAEL J. MADIGAN, individually and in his official capacity as Speaker of the Illinois House of Representatives,	)	
Plaintiffs,	)	
v.	)	No. 2013 CH 17921
PAT QUINN, Governor of the State of Illinois, in his official capacity, and JUDY BAAR TOPINKA, Comptroller of the State of Illinois, in her official capacity,	)	
Defendants.	)	

MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs JOHN J. CULLERTON and MICHAEL J. MADIGAN, by their counsel, Richard J. Prendergast, Kevin Forde, Michael Kasper, Eric Madiar, and Heather Wier Vaught, state as follows in support of their Motion for Summary Judgment:

I. Introduction.

This is an action by the presiding officers of both chambers of the Illinois General Assembly to prevent Governor Quinn's attempts to intimidate and punish legislators by eliminating their salaries through a line-item veto, contravening both the separation of powers and legislative salary provisions of the Illinois Constitution of 1970. In their Complaint, the Senate President and Speaker of the House first seek a declaration that, in fact, the line-item veto in question did *not* eliminate legislative salaries prescribed by law, and an order requiring Comptroller Topinka to pay those salaries based on the plain language of the appropriation bill

and statutes governing legislative compensation. Second, and in the alternative, if the Court were to determine that the Governor Quinn's line-item veto did, in fact, eliminate legislative salaries, Plaintiffs seek both a declaration that the line-item veto violated the Illinois Constitution and an injunction ordering Comptroller Topinka to pay legislative salaries to remedy that constitutional violation.

II. Statement of Undisputed Facts.

On May 28, 2013, the Illinois House of Representatives passed House Bill 214, appropriating funds for much of the State's fiscal year 2014 budget, including the necessary funds to pay Illinois legislators' salaries for the current fiscal year. (A copy of the enrolled version of House Bill 214 is attached as Exhibit A.) The Senate passed the bill on May 31, 2013, and the bill was sent to the Governor. (Verified Complaint, ¶ 17, 18.) On July 10, 2013, the Governor issued what purported to be a line-item veto, eliminating certain lines of House Bill 214 relating to legislators' compensation, but left in place other lines in the appropriations bill, which standing alone provide appropriations for the annual salaries payable to all legislators. Specifically, the Governor struck lines 6 through 10 and 15 through 25 of Page 75 of House Bill 214 and lines 1 through 10 of Page 76 of House Bill 214. (A copy of the Governor's Message is attached as Exhibit B.). The line-item veto eliminated the following text concerning the base salaries of legislators:

For salaries of the 118 members of the House of Representatives at a base salary of $67,836	7,766,100
For salaries of the 59 members of the Senate at a base salary of $67,836	3,947,800

(*See* Exhibit A, p. 75, Exhibit B) Significantly, the remaining provisions of House Bill 214 were not vetoed and became law as Public Act 98-64 pursuant to Article IV, Section 9(d) of the

Illinois Constitution. *See* Ill.Const. 1970, art. IV, § 9(d) ("Portions of a bill not reduced or vetoed shall become law.").

Regarding legislative base salaries, Public Act 98-64 retains the following provisions after the line-item veto:

> Section 15. The following named sums, or so much thereof as may be necessary, respectively, are appropriated to the State Comptroller to pay certain officers of the Legislative Branch of the State Government, at the various rates prescribed by law:
>
> *******
> Officers and Members of General Assembly
>
> Total..... $11,713,900

(*See* Exhibit A, pp. 74-75, Exhibit B.) Similarly, Public Act 98-64 provides for the payment of additional compensation to legislative leaders and committee officers, *i.e* the additional compensation for the Speaker and President, the majority and deputy majority leaders, caucus and conference chairs, committee chairs and minority spokespersons, etc. The Governor's line-item veto eliminated lines pertaining to these individual leadership positions but did *not* veto the total amount appropriated for additional salaries, once again resulting in a lump sum appropriation for these leadership positions:

> For additional amounts, as prescribed by law, for party leaders in both chambers as follows:
>
> Total..... $2,138,800

Defendant Topinka failed to pay Plaintiffs and other elected legislators the first payment of their salaries, which should have been paid on August 1, 2013. (Verified Complaint, ¶ 25,

26.) In addition, she has indicated that she will not make any future salary payments to legislators until ordered to do so by a court. (Verified Complaint ¶ 25.)

III. Standard of Review.

Summary judgment is appropriate where "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005(c). The interpretation or constitutionality of a state statute is a question of law uniquely appropriate for summary judgment. *Matsuda v. Cook Cnty. Employees' & Officers' Annuity & Ben. Fund,* 178 Ill. 2d 360, 364, 687 N.E.2d 866, 868 (1997); *Bd. of Ed., Sch. Dist. No. 150, Peoria v. Greater Peoria Sanitary & Sewage Disposal Dist.*, 80 Ill. App. 3d 1101, 1104, 400 N.E.2d 654, 656 (4th Dist. 1980).

This case does not present any genuine issue of material facts. The General Assembly passed appropriations legislation that provides a sufficient appropriation for legislators' salaries. The Governor line-item vetoed some, but not all, of the line-items related to legislative salaries set forth in that legislation. Based on these uncontested facts, this Court must determine whether the appropriation, even after the line-item veto, was sufficient to entitle legislators to their salaries and, if not, whether the line-item veto violated the Illinois Constitution. Both of these issues raise questions of law suitable for summary judgment.

IV. Argument

Plaintiffs are entitled to summary judgment on two independent bases. First, Public Act 98-64 is sufficiently clear, even after the Governor's line-item veto, to direct the Comptroller to pay legislative salaries as prescribed by law. Reviewing that Public Act based on its plain language, and based on this Court's duty to interpret state laws to avoid a constitutional infirmity

where possible, this Court should enter summary judgment for Plaintiffs on Count I. Second, and in the alternative, should this Court find that Public Act 98-64 effectively eliminated legislative salaries, this Court should declare that the Governor's line-item veto is unconstitutional and unenforceable because those actions violate both the legislative salary provision of Article IV, Section 11, and the principle of separation of powers contained in Article II, Section 1 of the Illinois Constitution.

A. Public Act 98-64 Provides Direction to the Comptroller to Issue Payment of Legislative Salaries to Members and Party Leaders of the General Assembly.

The General Assembly has the constitutional power to "make appropriations for all expenditures of public funds by the State." Ill. Const. 1970, art. VIII, § 2(b). An appropriation involves "the setting apart from public revenue a certain sum of money for a specific object." *Am. Fed'n of State, Cnty. & Mun. Employees, AFL-CIO (AFSCME) v. Netsch*, 216 Ill. App. 3d 566, 567, 575 N.E. 945, 946 (4th Dist. 1991), quoting *Illinois Municipal Retirement Fund v. City of Barry*, 52 Ill.App.3d 644,646, 367 N.E.2d 1048, 1049 (4th Dist. 1977).

An appropriations bill, like any other state law, must be interpreted according to well-settled canons of statutory construction, the primary of which is to give effect to the intent of the legislature. *Ultsch v. Illinois Mun. Ret. Fund*, 226 Ill. 2d 169, 181, 847 N.E.2d 1, 8 (2007). The statutory language must be given its plain and ordinary meaning. *Id.* When the plain language of legislation is clear and unambiguous, resort to other tools of statutory construction is not necessary. *Land v. Bd. of Educ. of City of Chicago*, 202 Ill. 2d 414, 421-22, 781 N.E.2d 249, 254 (2002).

Public Act 98-64, even after the Governor's line-item veto, appropriates funds to pay legislators' salaries for the entire fiscal year. The Governor did not veto the total amount

appropriated for either the legislators' base salaries or the additional salaries paid to party leaders, and those amounts remain in the law today. After the Governor's actions, Public Act 98-64 still sets apart $11,713,900 to be paid to "Officers and Members of the General Assembly" and $2,138,800 to "party leaders":

Section 15. The following named sums, or so much thereof as may be necessary, respectively, are appropriated to the State Comptroller to pay certain officers of the Legislative Branch of the State Government, at the various rates prescribed by law:

****

Officers and Members of General Assembly

Total..... $11,713,900

For additional amounts, as prescribed by law, for party leaders in both chambers as follows:

Total..... $2,138,800

(*See* Exhibit A, pp. 74-76, Exhibit B.)

The result of the Governor's line-item veto is a lump sum appropriation for legislators' base salaries and another lump sum appropriation for party leaders' additional compensation. Lump sum appropriations are a routine feature of appropriations bills, and their use has been upheld by the Supreme Court. *See Owens v. Green*, 400 Ill. 380, 81 N.E. 2d 149 (1948). Based on the plain language of Public Act 98-64, the Comptroller has been given clear authority to spend up to $11,713,900 on legislators' base salaries and up to $2,138,800 on additional compensation for party leaders.

The remaining question is whether the Comptroller has adequate direction as to how to spend these sums of money—which legislators to pay, how much to pay each one, and how often. The answer is yes: Public Act 98-64 incorporates existing state law that answers all of these questions. Specifically, Public Act 98-64 provides that the base salary paid to legislators shall be "at the various rates as prescribed by law," and further states that the additional payments to party leaders and committee officers shall be "as prescribed by law." The "law" referenced in Public Act 98-64 is the General Assembly Compensation Act, which prescribes the base salary each legislator receives, additional compensation for party leaders, and how often (monthly) that compensation is paid. *See* 25 ILCS 115/1.

Thus, the Comptroller has authority to spend specified sums of money and adequate direction as to whom to pay, how much, and how often. It is difficult to envision what information or direction the Comptroller could possibly lack. Certainly, nothing contained in the language that was vetoed by the Governor would provide her any additional information. She does not need an appropriations bill to know that there are 118 members of the Illinois House of Representatives and 59 Senators. The only information the Governor vetoed was the base salary for each legislator: $67,836 for each of the 118 Representatives and 59 Senators. This figure, it is worth noting, is not even accurate because it fails to take into account the slight salary adjustments for unpaid furlough days. *See* 25 ILCS 115/1.9. But the salient point is that the General Assembly Compensation Act – not Public Act 98-64 – provides the information the Comptroller requires in terms of who to pay, how much and how often. The only thing that Public Act 98-64 provides is the actual authority to spend the money – and the Governor did not veto that authority.

For example, to calculate legislators' base salaries, the Comptroller merely needs to start with the base salary provided for in the General Assembly Compensation Act and divide by 12 to reflect the monthly payments (67,836 / 12 = 5,653). Next, she applies the furlough provisions (67,836 / 261 = 259.91) of Section 1.9 of the Act to each legislator's monthly salary. (5,653 – 259.91 = 5,393.09). As a result, a total of $11,454,923.16 will be paid out from the lump sum throughout the course of the fiscal year. (5,393.09 x 12 months x 177 members = 11,454,923.16).[1]

The additional amounts due to party leaders and committee officers are similarly calculable by simply adding the applicable stipends enumerated in the Act to the base legislative salary for each eligible legislator. These amounts will be subtracted from the $2,138,800 for the stipends. Simply put, Public Act 98-64 provides the Comptroller with a sufficient pool of funds and, in concert with the General Assembly Compensation Act, provides adequate direction as to which legislators to pay, how much to pay each one, and how often to issue payment. If House Bill 214 had been sent to the Governor in the exact form as the amended bill that was sent back to the General Assembly, no one would have questioned whether it contained appropriations language sufficient to authorize the payment of all compensation to which legislators are entitled as provided for by law.

If any further proof were necessary that these lump sum appropriations are sufficient, the Court need look no further than other appropriations in the same legislation. Most notably, Public Act 98-64 contains a lump sum for *judicial* salaries:

> In addition to other sums appropriated, the sum of $238,221,198, or so much thereof as may be necessary, is appropriated from the General Revenue Fund

[1] The additional $258,976.84 in the appropriation accounts for the possibility of the death or resignation of a member during the term of office. *See* 25 ILCS 115/1.

> to the Supreme Court for operational expenses, awards, grants, and permanent improvements for the fiscal year ending June 30, 2014.

(*See* Exhibit A, p. 247.) Judicial salaries are paid out of this line-item as "operational expenses" and this lump sum appropriation contains no more information than that which remains in the General Assembly appropriation. Plaintiffs are not aware of any complaint by the Comptroller that she is unable to calculate a judge's monthly salary from this lump sum appropriation.

In addition, Public Act 98-64 and Public Act 98-27 (House Bill 213 - another bill appropriating funds for the fiscal year 2014 budget) include numerous other lump sum appropriations. (*See* Exhibit C, setting forth a list of lump sum appropriations contained in P.A. 98-64, and P.A. 98-27.) The Comptroller also appears to be disbursing these other lump sums without difficulty. Nothing in Public Act 98-64 regarding legislative salaries, even after the Governor's actions, makes this appropriation stand out from all these other lump sums. Accordingly, the Comptroller should be equally able to calculate legislative salaries from a virtually identical appropriation.

Moreover, the use of lump sums to pay legislators' salaries is not unprecedented. For fiscal years 1970, 1971 and 1975, the General Assembly passed fiscal year appropriations containing lump sums for legislators' salaries. (*See* P.A. 76-331, P.A. 76-1, P.A. 78-1018 (applicable provisions of which are attached as Exhibit D).) Again, former Comptrollers did not claim to have any difficulty converting those lump sums into paychecks for the legislators sitting at that time. In construing the lump sum payment of salaries and other compensation to legislators in Public Act 98-64, this Court should consider that previous appropriations bills did the same thing without controversy. Thus, any argument that the legislative salary appropriations are ambiguous should be rejected because the plain meaning of the statute is clear.

Although it is clear from the plain language of Public Act 98-64 that the appropriations bill directs the Comptroller to pay legislative salaries, another canon of statutory interpretation likewise compels judgment in Plaintiffs' favor—the doctrine of constitutional avoidance. Courts, where possible, should avoid interpreting statutes in a manner that renders them constitutionally infirm. *Villegas v. Bd. of Fire & Police Comm'rs of Vill. of Downers Grove*, 167 Ill. 2d 108, 124, 656 N.E.2d 1074, 1082 (1995); *Turner v. Campagna*, 281 Ill. App. 3d 1090, 1095, 667 N.E.2d 683, 685-86 (4th Dist. 1996). If this Court were to interpret Public Act 98-64 as effectively eliminating legislative salaries, then that Act runs afoul of the Illinois Constitution's provisions governing mid-term changes in legislators' salaries and the separation of powers, as argued *infra*. This Court should avoid that construction and, instead, rely on the plain language of Public Act 98-64 to find that the appropriation for legislative salaries is sufficient to order the Comptroller to pay legislators the full amounts of their salaries to which they are entitled and interest on any amounts that have been withheld. This Court should enter summary judgment on Count I in favor of Plaintiffs.

B. The Governor's Line-item Veto is Unconstitutional and Unenforceable.

Article IV, Section 11 of the Illinois Constitution provides that a General Assembly member "shall receive a salary and allowances as provided by law, but changes in the salary of a member shall not take effect during the term for which he has been elected." Ill.Const. 1970, art. IV, § 11. The Illinois Constitution contains similar salary protection provisions for executive branch officers (Ill.Const.1970, art. V, § 21), members of the judiciary (Ill.Const. 1970, art. VI, § 14), and local government officials (Ill.Const. 1970, art. VII, § 9(b)). The Governor cannot seriously dispute that eliminating a legislator's pay for an entire year "changes" his or her "salary" "during the term" to which he or she "has been elected." Ill. Const.1970, art. IV, § 11.

Moreover, the additional amounts paid to party leaders is every bit as much "salary" as the base salaries, and thus equally entitled to constitutional protection. *Rock v. Burris*, 139 Ill.2d 494, 497, 564 N.E.2d 1240, 1243 (1990)(invalidating legislation that provided mid-term additional compensation to legislators in leadership positions).

The Governor will no doubt rely upon his authority, under Article IV, Section 9(d) of the Illinois Constitution, to "reduce or veto any item of appropriations in a bill ..." (Ill.Const.1970, art. IV, § 11). However, Supreme Court precedent clearly establishes that this provision is not the end of the inquiry, but only the beginning. The Supreme Court has never accepted the notion that the Governor may use his veto authority without regard to the safeguards of separation of powers and judicial review. In fact, as set forth in greater detail below, the Supreme Court has consistently held that the Governor's veto actions are subject to judicial review in order to ensure that those actions are consistent with the limited power granted to the Governor and with other constitutional provisions.

1. The Governor's Veto Powers Must be Used in a Manner that Comports with the Illinois Constitution.

At the onset, it is worth noting that when considering a bill, the Governor acts in a legislative capacity. *Williams v. Kerner*, 30 Ill.2d 11, 14, 195 N.E.2d 680, 682 (1963); *CMS v. Ill. State Labor Relations Bd.*, 249 Ill.App.3d 740, 746, 619 N.E.2d 239, 243 (4th Dist. 1993). Because it is a legislative function intruding on the separation of powers, the Governor's veto power must be narrowly construed and does not extend to vetoes that violate the Illinois Constitution. *Fergus v. Russel*, 270 Ill. 304, 348-50, 110 N.E.2d 130, 147-488 (1915).

Interestingly, in 1924, the Supreme Court foresaw the potential havoc that could result from the line-item veto, and perhaps the conflict before this Court today:

It is true, if the Governor is clothed with such power to veto he might veto

> appropriations to pay salaries of any or all state officers, including judges of the courts, and thereby suspend the operation of any or all departments of the state government. It is not conceivable that any man elected to the office of Governor could ever become so reckless as to invite his own destruction by such an act."

People ex rel. Millner v. Russel, 311 Ill. 96, 99-100, 142 N.E. 537, 538 (1924). The potential that this power might be "abused" (*Id.* at 100, 142 N.E. at 538) is precisely why the framers of the 1970 Constitution adopted salary protection provisions for not only legislators, but for judges, executive officers, and local government officials as well.

a. Supreme Court Precedent Mandates that a Governor's Veto of Appropriations Must Comply with Other Provisions of the Illinois Constitution.

The Supreme Court has previously held that the Governor's veto authority over appropriations cannot be used in a manner that violates a Constitutional salary provision. *Jorgensen v. Blagojevich*, 211 Ill. 2d 286, 299, 811 N.E.2d 652, 660 (2004). In *Jorgensen*, the Supreme Court considered, and soundly rejected, the argument that the Governor's veto authority was "not subject to judicial oversight" when it unanimously invalidated the Governor's attempted reduction veto of judicial salaries:

> The executive branch, no less than the legislative branch, is bound by the commands of our constitution. The judicial power of the State of Illinois is vested in the courts (Ill. Const.1970, art. VI, § 1), and it is the duty of the judiciary to construe the constitution and determine whether its provisions have been disregarded by either of the other branches of government.

Id. at 310-311, 811 N.E.2d at 666.

The *Jorgensen* decision left little doubt that the Governor's veto actions were subject to judicial review: "If officials of the executive branch have exceeded their lawful authority, the courts have not hesitated and must not hesitate to say so." *Id.* at 311, 811 N.E.2d at 666. This principle applied to the judicial compensation provision because "[w]hat is at stake is the very independence of the judiciary and the preservation of separation of powers." *Id.* at 314, 811

N.E.2d at 668. In this case, the Governor has publicly claimed that this line-item veto is retribution for the legislature's failure to pass pension related legislation to his liking, a coercive misuse of the line-item veto that violates the Constitution's mandate that a legislator "receive a salary" and prohibition against mid-term "changes" to legislative salaries. It is also contrary to as well the fundamental precept of separation of powers.

Like this case, *Jorgensen* involved a violation of separation of powers through a constitutional salary protection clause in the Illinois Constitution. *Id.* at 287, 811 N.E.2d at 654 In *Jorgensen*, the General Assembly passed, and the Governor signed, legislation eliminating a statutory cost of living adjustment ("COLA") for judges and other officers for the 2003 State fiscal year. *Id.* at 290, 811 N.E.2d at 655. The General Assembly later determined that the statute, at least as applicable to judges, was unconstitutional and passed new legislation restoring the COLA for judges for fiscal year 2003. *Id.* The Governor vetoed that bill. *Id.* at 292, 811 N.E.2d at 656.

Later in 2003, the General Assembly passed appropriations legislation for the fiscal year 2004 budget that included funds for both judicial salaries and the applicable COLA. *Id.* at 290-91, 811 N.E.2d at 655-56. The Governor then issued a veto reducing the appropriations for the judiciary by an amount roughly equal to the amount of the COLA. *Id.* at 291, 811 N.E.2d at 656. As a result, "the practical effect of the veto was to prevent the COLA from being implemented." *Id.* Despite the Governor's attempted reduction veto, the Supreme Court ordered that the 2004 COLA be included in judicial salaries because it "believed that the Governor's use of his reduction veto ... violated article VI, section 14, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 14) as well as article II, section 1, of the Illinois Constitution (Ill. Const. 1970, art. II, § 1), which establishes the principle of separation of powers." *Id.* at 291-92, 811 N.E.2d at 656.

The Supreme Court restored the COLA for both the 2003 and 2004 fiscal years. Regarding the 2003 COLA, the Court concluded that the original bill that suspended the COLAs was unconstitutional and so the Court did not have to reach "the validity of that veto." *Id.* at 309, 811 N.E.2d at 666. Regarding the validity of the reduction veto of the 2004 COLA, however, the Court specifically held that "the Governor's arguments fail on the merits." *Id.*

Of particular interest here, the Court "easily disposed of" the Governor's argument that the judges could not be paid their COLA because "there was no appropriation" for that purpose. *Id.* at 311, 811 N.E.2d at 667. The Court noted that, in fact, the General Assembly did appropriate sufficient funds to pay for the 2004 COLA, and the "status of that appropriation was put in issue only because of the Governor's reduction veto." *Id.* In squarely addressing the constitutionality of the Governor's actions, the Court held: "that reduction veto was unconstitutional. As such, it has no force or effect. That being the case, it did not operate to reduce the funding for judicial salaries [for fiscal year 2004]." *Id.*

The Supreme Court's conclusion regarding the judicial salary provision contained in Article VI, Section 14 of the Illinois Constitution is equally applicable in this case. Regarding Article VI, Section 14, the Court concluded:

> Its terms are clear and unconditional. It constrains not only the legislature, but the executive branch as well. No state officer, official or entity may take any action, directly or indirectly, that diminishes a judge's pay during his term of office.

Id. at 305, 811 N.E.2d at 663.

In this case, the terms of Article IV, Section 11 (the legislative equivalent of Article VI, Section 14) are just as "clear and unconditional." Article IV, Section 11 constrains "not only the legislature, but the executive branch as well." The only difference is that the judicial salary clause provides that judicial salaries "shall not be diminished" during a term in office, while the

legislative salary clause of Article IV, Section 11 prohibits all mid-term "changes" in salaries, thus prohibiting both mid-term salary increases and reductions. Consequently, as in *Jorgensen*, no state officer, including Defendants, may take "any action, directly or indirectly" that "changes" a legislator's pay "during his term in office."

The Illinois Appellate Court has similarly ruled that Chicago aldermen were entitled to their full salary amounts for several prior years despite mid-term salary reductions. *People ex rel. Northrup v. Council of the City of Chicago*, 308 Ill.App. 284, 291-94, 31 N.E.2d 337, 340-41 (1st Dist. 1941). The Court concluded that ordinances reducing aldermanic salaries violated Article IX, Section 11 of the Illinois Constitution of 1870, which prohibited the mid-term increase or decrease of the fees, salary or compensation of municipal officers. *Id.* at 296, 31 N.E.2d at 342.

In another case very similar to this one, the Supreme Court of Kings County, New York ordered the Governor to include legislators' salaries in temporary appropriations during an extended budget battle. *Dugan v. Pataki*, No. 16345/95 (Kings Cty. Supreme Court, 1995)(attached as Exhibit E). In *Dugan*, New York Governor George Pataki submitted a temporary appropriations bill to the legislature to maintain government operations while the legislature negotiated a budget for the upcoming fiscal year. *Id.* at 2. The Governor's bill included salaries for most state employees but omitted legislators' salaries to "coerce" the legislators to "pass a budget within the parameters mandated by the Governor." *Id.* at 6. Under New York law, the legislature lacked the authority to initiate temporary appropriations absent action by the Governor. *Id.* at 7. In ordering payment of legislators' salaries the Court described Governor Pataki's actions as a "blatant violation of separation of powers" that "strikes at the very heart of our democratic system." *Id.* at 6.

Governor Quinn's line-item veto in this case is just as unconstitutional as Governor Blagojevich's reduction veto was in *Jorgensen*, and just as blatant a violation of separation of powers as the New York Governor's actions in *Dugan*. As such, the Governor's veto, like the veto in *Jorgensen*, is "without force or effect" and "cannot operate to reduce the funding" for legislative salaries.

b. The Supreme Court has Similarly Held that a Governor's Veto of Substantive Bills Must Also Comply with the Illinois Constitution.

The Supreme Court has also held that the Governor's amendatory veto authority over substantive legislation, derived from Article IV, Section 9(e), can only be exercised in a manner consistent with the Constitution. *People ex rel. Klinger v. Howlett*, 50 Ill.2d 242, 278 N.E.2d 84 (1972). In *Klingler*, the General Assembly passed legislation regarding financial assistance to nonpublic schools. *Id.* at 244, 278 N.E.2d at 85. The Governor issued an amendatory veto "with the recommendation that the title of each bill be amended and that everything in each bill after the enacting clause be stricken and entirely new textual material be substituted therefor." *Id.* In denying a petition for a writ of mandamus, the Supreme Court held that the Governor's amendatory veto authority was subject to judicial review:

> [W]e cannot now attempt to delineate the exact kinds of changes that fall within the power of the Governor to make specific recommendations for change. It can be said with certainty, however, that the substitution of complete new bills, as attempted in the present case, is not authorized by the constitution.

Id. at 249, 278 N.E.2d at 88. *see also County of Kane v. Carlson*, 116 Ill.2d 186, 215, 507 N.E.2d 482, 493 (1987); *People ex rel. City of Canton v. Crouch*, 79 Ill.2d 356, 376, 403 N.E.2d 242, 251 (1980). While the Court has upheld some amendatory vetoes (*Canton*, *Crouch*) and invalidated others (*Klingler*), all of these cases stand for the proposition that the Governor's veto actions are subject to judicial review.

2. Gubernatorial Vetoes Must Be Subject to Judicial Review.

The notion that the Governor's vetoes are immune from judicial review and separation of powers has been considered, and expressly rejected by the Supreme Court. In *Jorgensen*, the Governor's defense of his reduction veto "[d]istilled to its essence" was that "the constitutionality of his official actions is simply not subject to judicial oversight." *Jorgensen*, 211 Ill. 2d at 310, 811 N.E.2d at 666. The Court rejected that argument noting that "[n]o Illinois court has ever so held." *Id.* The Court went on to explain that "the executive branch, no less than the legislative branch, is bound by the commands of our constitution." *Id.* at 310-11, 811 N.E.2d at 666, *citing Rock v. Thompson,* 85 Ill.2d 410, 418, 426 N.E.2d 891 (1981); *People ex rel. Harrod v. Illinois Courts Comm'n,* 69 Ill.2d 445, 458, 372 N.E.2d 53 (1977).

For example, what if the Governor used his line-item veto to eliminate funding for African American or Latino school districts, but left whole funding for predominantly white school districts? Would anyone seriously claim that action could not be challenged under the Equal Protection Clause of Article I, Section 2 of the Illinois Constitution? Or what if the Governor were to use his amendatory veto power to delete every word of a bill about education reform or health care and replace it with entirely unrelated provisions dealing with pensions, or guns, or something else entirely? What if the Governor did that to every bill passed by the legislature next year? Would anyone seriously suggest that the Courts could provide no relief, despite *Klingler*, *Carlson* and *Crouch*?

While the Governor's authority to issue vetoes, both substantive and appropriations related, comes without conditions or limitations in the text of the Illinois Constitution (Ill.Cont. 1970, art. IV, § 9(d)) ("The Governor may reduce or veto any item of appropriations..."); Ill.Const. 1970, art. IV, § 9(e)("The Governor may return a bill with specific recommendations ..."), the same can be said of the legislature's power to enact laws (Ill.Const. 1970, art. IV, § 8(b)

("The General Assembly shall enact laws only by bill."). However, no one would seriously argue that the legislature's bills did not have to otherwise comply with the Illinois Constitution. *See Droste v. Kerner*, 34 Ill. 2d 495, 498–99, 217 N.E.2d 73, 76 (1966)(General Assembly basically may enact any law, provided it is not inhibited by some constitutional provision).

As the Illinois Supreme Court explained in the context of the Illinois Constitution of 1870's salary provisions:

> The acts of the officers of each branch, while such officers are in power, should not be made to depend upon or be influenced by the acts of another branch, nor should there be anything in the conduct of either that would even give rise to a suspicion of such a thing as coercion by reducing salaries, or a reciprocal interchange of favors by increasing salaries; hence the reason for the constitutional provision putting it beyond the power of the Legislature to increase or diminish the salaries of state officers in office and in power.

People ex rel. Holdom v. Sweiter, 280 Ill. 436, 442, 117 N.E. 625, 627 (1917). The Court's reasoning in *Holdom* is equally applicable to the executive branch. Here, the Governor is openly trying to "coerce" the legislators to pass certain legislation that he desires by withholding their salaries. In doing so, he has violated both Article IV, Section 11 and Article II, Section 1 of the Constitution.

The importance of these constitutional protections cannot be overstated. Legislators are elected to represent their constituents in the State Capitol. The Governor's actions, if permitted to stand, could force some of these legislators to choose between their constituents and their own – and their families' – economic well being. Today, the issue is pensions, but tomorrow it could be guns, abortion, or taxes. Eliminating, or even threatening to eliminate, a public official's salary for an entire year poses an undeniable threat to that official's independence. Legislators, like everyone else, have mortgages and tuition to pay, parents and children to care for, and the myriad personal financial obligations that everyone else faces. As the Supreme Court

recognized, the Illinois Constitution was written to prevent public officials - not just legislators, but executive officers and judges too - from having to consider their personal finances in carrying out their public duties. The Governor's line-item veto violates the Illinois Constitution, and should be invalidated. The Comptroller should be ordered to pay the legislators the salaries to which they are legally entitled.

C. Plaintiffs are Entitled to a Permanent Injunction Directing the Comptroller to Pay Legislators' Salaries.

For the foregoing reasons, Plaintiffs have demonstrated that they are entitled to judgment as a matter of law. As a result, they are entitled to the issuance of a permanent injunction directing the Comptroller to pay their, and all legislators', salaries as set forth in the Complaint. *People ex rel. Dep't of Corr. v. Fort*, 352 Ill. App. 3d 309, 314, 815 N.E.2d 1246, 1250 (4th Dist. 2004)("When granting permanent injunctive relief, the trial court, by definition, necessarily decides the plaintiff's success on the merits of the case."). A permanent injunction is designed to extend or maintain the status quo indefinitely after a hearing on the merits where it has been shown that the plaintiff is suffering irreparable harm and there is no adequate remedy at law. *American Nat. Bank and Trust Co. of Chicago v. Carroll*, 122 Ill.App. 3d 868, 881, 462 N.E.2d 586, 595 (1st Dist. 1984); *ABC Trans National Transport, Inc. v. Aeronautics Forwarders, Inc.*, 90 Ill.App.3d 817, 833, 413 N.E.2d 1299, 1312 (1st Dist. 1980).

There are four elements necessary to obtain injunctive relief: (1) a clear and ascertainable right in need of protection; (2) irreparable harm without injunctive relief; (3) no adequate remedy at law; and (4) success on the merits. *Postma v. Jack Brown Buick, Inc.*, 157 Ill.2d 391, 399, 626 N.E.2d 199, 204 (1993). In this case, Plaintiffs have a clear and ascertainable right to the salary commensurate with their elected positions in the General Assembly, a right provided to them not only by Article IV, Section 11, but also by the General Assembly Compensation Act. *See*

Ill.Const. 1970, art. IV, § 11; 25 ILCS 115/1. Next, Plaintiffs will suffer irreparable harm unless this Court issues an injunction because the only way that they will be paid the salaries to which they are legally entitled is if this Court orders the Comptroller to do so.

Plaintiffs likewise have no adequate remedy at law. Plaintiffs cannot sue the State for damages in the Circuit Court. 745 ILCS 5/1. As a result, the only remedy available to them is to seek the injunctive relief they seek in this Complaint. Defendants may respond that Plaintiffs could attempt to override the Governor's actions, but this contention is incorrect for several reasons. First, Plaintiffs cannot override the Governor's action without the concurrence of a three-fifths majority in each chamber (Ill.Const. 1970, art. IV, § 9), making Plaintiffs' rights contingent on the agreement of 70 other House members and 35 other Senators. Second, the Senate cannot do anything to override the Governor's line-item veto until the House does so first. *Id.* ("[the Governor] shall veto it by returning it to the house in which it originated.") More importantly, however, it is well settled that a legislative remedy is not an adequate remedy at law. *Rodgers v. Whitley,* 282 Ill.App.3d 741, 748, 668 N.E.2d 1023, 1029 (1st Dist. 1996) ("People who believe that they are harmed by an unconstitutional statute may always seek legislative redress, but this process does not provide an adequate remedy at law so as to preclude a constitutional challenge.")

Finally, for the foregoing reasons Plaintiffs are entitled to a judgment on the merits as Public Act 98-64 adequately directs the Comptroller to pay legislative salaries for the fiscal year, and because, in the alternative, the Governor's line-item veto violates Article II, Section 1 and Article IV, Section 11 of the Illinois Constitution. The propriety of a permanent injunction is further borne out by the fact that it is the same relief granted by the Supreme Court in *Jorgensen*, the last time the Governor tried to withhold state officials' salaries.

V. Conclusion.

WHEREFORE, for the foregoing reasons and the reasons set forth in the Motion for Summary Judgment, Plaintiffs respectfully pray for the following relief:

(a) That this Court declare that Public Act 98-64 authorizes the payment of salaries to Officers and Members of the Illinois General Assembly, notwithstanding the Governor's line-item veto of that legislation;

(b) In the alternative, that this Court declare that the Governor's line-item veto of House Bill 214 is null and void because it violates Article II, Section 1 and Article IV, Section 11 of the Illinois Constitution of 1970;

(c) That this Court declare that Public Act 98-64, if interpreted to eliminate or otherwise change the salaries of members and officers of the Illinois General Assembly, is in violation of Article IV, Section 11 of the Illinois Constitution of 1970;

(d) That this Court enter an Order directing Defendant Topinka to pay members and officers of the Illinois General Assembly the full salaries to which they are entitled in accordance with the General Assembly Compensation Act, plus interest on any amounts that have been withheld; and

(e) That this Court order such other and further relief as the Court shall deem just.

Respectfully submitted,

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Appendix F

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

JOHN J. CULLERTON, individually and in his official capacity as President of the Illinois Senate, and MICHAEL J. MADIGAN, individually and in his official capacity as Speaker of the Illinois House of Representatives,

Plaintiffs,

v.

PAT QUINN, Governor of the State of Illinois, in his official capacity, and JUDY BAAR TOPINKA, Comptroller of the State of Illinois, in her official capacity,

Defendants.

Case No. 13 CH 17921

Hon. Neil H. Cohen

MEMORANDUM OF LAW BY GOVERNOR PAT QUINN IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT

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MEMORANDUM OF LAW BY GOVERNOR PAT QUINN IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

The President of the Illinois Senate and the Speaker of the Illinois House of Representatives have sued the Illinois Governor and the Illinois Comptroller over the Governor's line-item veto of appropriations for members of the General Assembly. The plaintiffs thereby seek from the judiciary relief that the Constitution empowers the plaintiffs and their fellow legislators to achieve by themselves, but have thus far declined to pursue.

When a veto rankles the General Assembly, the usual and constitutionally sanctioned response is to seek to override it. Here, although the General Assembly is currently not in session, article IV, section 5 of the Constitution authorizes the presiding officers of both houses—*i.e.*, the plaintiffs in this lawsuit—to call a special session of the General Assembly to seek to override the Governor's veto. They have declined to exercise that power. They will likewise have the ability, when the General Assembly's veto session begins next month, to seek to override the Governor's veto at that time. As indicated by the filing of this lawsuit, they evidently do not wish to pursue that relief, either.

There may be understandable political reasons for the plaintiffs' reluctance to override the Governor's veto at this time. But those concerns should be of no moment to the Court, which is being asked to venture into the political thicket to sort out a legislative process that has yet to play itself out.

This dispute is not ripe. Under the branch of the ripeness doctrine applicable here, courts decline to intervene in legislative disputes until the legislative process has been completed. In this case, that entails waiting for the leaders of the General Assembly to decide whether to let the

veto stand or seek to override it, as well as the outcome of any override attempt. If the veto is overridden, the case will be moot. If an override is sought but fails, the merits of the plaintiffs' claims can be addressed at that time.

Should the time come when the merits of the plaintiffs' claims can be addressed, short work can be made of them. Indeed, the positions taken by the plaintiffs in this litigation are inconsistent with their own actions taken, and public pronouncements made, on these issues before this lawsuit arose.

In Count I of their two-count Complaint, the plaintiffs argue that, regardless of the Governor's clear intent to veto any appropriation to the members of the General Assembly, his failure to delete the corresponding totals inadvertently created lump sum appropriations in the full amount of the original appropriations. This argument is inconsistent with the paramount role of the Governor's intent in the legislative veto process, the customary manner in which Illinois Governors make line-item vetoes, and the General Assembly's own method of deleting or amending appropriation bills.

Count II purports to challenge the constitutionality of the Governor's veto. That claim improperly seeks to add limits to the Governor's power, under article IV, section 9(d) of the Constitution, to veto "any item of appropriations"—power that has been held to apply to appropriations for legislators' compensation. That claim also rests on the false premise that article IV, section 11 of the Constitution prohibits mid-term decreases in legislators' compensation. However, as President Cullerton has expressly acknowledged, and as the General Assembly has implicitly acknowledged by repeatedly passing laws imposing "furlough" days that reduce legislators' compensation, article IV, section 11 merely prevents legislators from increasing their own salaries in the middle of their term of office.

For these and other reasons detailed below, Governor Quinn respectfully requests that this case be dismissed on grounds of ripeness. If the time comes when the merits are reached, summary judgment should be entered in favor of the Governor on both counts of the Complaint.

STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE

I. THE APPROPRIATIONS BILL AND THE GOVERNOR'S LINE-ITEM VETO

On May 28, 2013, the Illinois House of Representatives passed House Bill 214 (the "Appropriations Bill"), an appropriations bill that included, among other things, appropriations to pay members of the General Assembly. (Compl., ¶ 16.) On May 31, 2013, the Illinois Senate passed the Appropriations Bill and on June 4, 2013, sent the Bill to Governor Pat Quinn. (*Id.*, ¶¶ 17-18.)

On July 10, 2013, the Governor exercised a line-item veto of portions of the Appropriations Bill pursuant to article IV, section 9(d) of the Illinois Constitution. (*Id.*, ¶ 19.) The line-item veto eliminated the following items of appropriation from the Appropriations Bill:

> For salaries of the 118 members of the House of Representatives at a base salary of $67,836 7,766,100
>
> For salaries of the 59 members of the Senate at a base salary of $67,836 3,947,800
>
> * * *
>
> For the Speaker of the House, the President of the Senate and Minority Leaders of both Chambers 104,900
>
> For the Majority Leader of the House 22,200
>
> For the eleven assistant majority and minority leaders in the Senate 216,800
>
> For the twelve assistant majority and minority leaders in the House 206,900
>
> For the majority and minority

caucus chairmen in the Senate 39,500

For the majority and minority conference chairmen in the House 34,500

For the two Deputy Majority and the two Deputy Minority leaders in the House 75,600

For chairmen and minority spokesmen of standing committees in the Senate except the Committee on Assignments 532,000

For chairmen and minority spokesmen of standing and select committees in the House 906,400

(Pl. Mem., Ex. A at 75-77.) As expressly stated in the Governor's veto message, the sum of these vetoed appropriations totaled $13,852,700. (Pl. Mem., Ex. B at 1.)

Although the Governor did not adjust the section total to reflect the appropriations that he vetoed, the Governor's line-item veto was intended to "eliminate[]" all appropriations for the salaries of the members of the General Assembly. (*See* Pl. Mem. at 1-2.) The Governor's intent was consistent with the custom and practice of Illinois governors of exercising line-item vetoes in appropriation bills by striking out line items while leaving section totals undisturbed. (Affidavit of Benjamin E. Winick, ¶ 3 & Group Ex. A.) That approach to line-item vetoes mirrors the General Assembly's approach to amending the amounts in appropriation bills. "[W]hen amending the line item amounts in an appropriation bill, it has been the custom and practice to not amend the totals of line item amounts even though changes in one or more line items make those totals incorrect." LEGISLATIVE REFERENCE BUREAU, *Illinois Bill Drafting Manual,* Dec. 2012, at 139.

II. TIMING OF THE GENERAL ASSEMBLY'S POTENTIAL CONSIDERATION OF WHETHER TO ATTEMPT TO OVERRIDE THE GOVERNOR'S VETO

The General Assembly was not in session when the Governor exercised his line-item veto on House Bill 214, and is not scheduled to reconvene until October 22, 2013. (Affidavit of Diana J. Koppang, ¶ 2.) The General Assembly has not voted on whether to override the Governor's line-item veto pursuant to its authority under article IV, section 9 of the Illinois Constitution. (*Id.*, ¶ 3.) No special session of the General Assembly has been called to vote on whether to override the Governor's line-item veto. (*Id.*, ¶ 4.)

III. STATEMENTS AND ACTIONS BY THE PLAINTIFFS REGARDING PERMISSIBILITY OF MID-TERM REDUCTIONS OF COMPENSATION PAID TO MEMBERS OF THE ILLINOIS GENERAL ASSEMBLY

Plaintiff John J. Cullerton is the President of the Illinois Senate for the 98th General Assembly. (Compl., ¶ 7.) Plaintiff Michael J. Madigan is the Speaker of the Illinois House of Representatives for the 98th General Assembly. (*Id.*, ¶ 8.)

President Cullerton and Speaker Madigan have each supported various bills over the years reducing legislators' salaries through mandatory "furloughs." (Koppang Aff., ¶ 5.) President Cullerton has voted in favor of those bills for each Fiscal Year since 2010, and he sponsored the bill for Fiscal Year 2014. (*Id.*, ¶ 6.) Speaker Madigan voted in favor of those bills for Fiscal Years 2010 through 2013, and sponsored the bill for Fiscal Year 2012. (*Id.*, ¶ 7.) All of those bills were passed into law. (*Id.*, ¶ 8.)

Consistent with his votes reducing legislators' compensation, President Cullerton has publicly stated his understanding that the prohibition against "changes" in legislators' salaries contained in article IV, section 11 of the Constitution only limits *increases* in compensation paid to members of the General Assembly. (Koppang Aff., Ex. F at 19:10-33.)

ARGUMENT

I. THE PLAINTIFFS' CLAIMS ARE NOT RIPE FOR REVIEW

The plaintiffs' claims are not ripe for review, and should therefore be dismissed, because the General Assembly has not yet voted on whether to override Governor Quinn's veto. The General Assembly has the power to override the Governor's veto by a three-fifths majority vote of each house. ILL. CONST. 1970, art. IV, § 9(c). If the General Assembly chooses to override the Governor's veto, the appropriations at issue will be restored. Because the General Assembly was not in session when the Governor vetoed the appropriations for legislative pay and is not scheduled to reconvene until October 22, 2013, the legislative process has not concluded. Until that occurs, there is no case or controversy before this Court. To decide the merits of the plaintiffs' claims now would be tantamount to issuing an advisory opinion on the effect and constitutionality of the Governor's actions.

A matter is not ripe for judicial review until the harm asserted has matured sufficiently to warrant judicial intervention. *Illinois Mun. League v. Illinois State Labor Relations Bd.*, 140 Ill. App. 3d 592, 605, 488 N.E.2d 1040, 1049 (4th Dist. 1986). Ripeness involves a two-part test: (1) an evaluation of the fitness of the issues for judicial decision; and (2) the hardship to the parties of withholding court consideration. *National Marine v. Illinois E.P.A.*, 159 Ill. 2d 381, 389, 639 N.E.2d 571, 574 (1994). Here, both elements of the two-part test lead to the conclusion that this case is not ripe.

A. The Plaintiffs' Claims Are Not Fit for Judicial Decision

The issues presented in this action are not fit for judicial decision because the legislative process has not concluded. *See Fletcher v. City of Paris*, 377 Ill. 89, 35 N.E.2d 329 (1941); *Slack v. City of Salem*, 31 Ill. 2d 174, 201 N.E.2d 119 (1964); *Board of Educ. of Addison Sch.*

Dist. No. 4, DuPage Cnty. v. Gates, 22 Ill. App. 3d 16, 316 N.E.2d 525 (2d Dist. 1974). In *Fletcher*, for example, certain taxpayers sought to enjoin a referendum vote on an ordinance related to the construction of a municipal light and power plant. 377 Ill. at 90-91, 35 N.E.2d at 330. The Supreme Court held that because the ordinance had not yet "passed through all of the legislative processes necessary to give it life," it was "prematurely and circuitously attacked in the courts." *Id.* at 99, 35 N.E.2d at 333. As the Court explained:

> These are the fundamental requirements for the enactment of such an ordinance. No one, or any number of these fundamental requirements less than all, is sufficient. They must all concur before the ordinance becomes such, or has any validity. Until these requirements have been complied with, no action can be taken under such an ordinance. That the courts cannot interfere with the exercise of these legislative functions is too well settled to now be questioned.

Id. at 95-96, 35 N.E.2d at 332.

Similarly, in *Slack*, a city treasurer challenged the constitutionality of a statute that allowed the city to issue bonds for urban redevelopment projects upon approval by a referendum vote. 31 Ill. 2d at 175, 201 N.E.2d at 120. The Supreme Court held that the treasurer's suit was not ripe for review because the referendum vote had not yet occurred. *Id.* at 177-78, 201 N.E.2d at 121. Relying on *Fletcher*, the Court held that the referendum vote was "a part of the legislative process" and that a judicial determination of the validity of the statute would be premature until the referendum vote was taken. *Id.* The Court reasoned that it had "no power to render advisory opinions, and until the legislative process has been concluded, there is no controversy that is ripe for a declaratory judgment. Indeed, the constitutional issues upon which the opinion of this court is sought may never progress beyond the realm of the hypothetical." *Id.* at 178, 201 N.E.2d at 121.

Finally, in *Gates*, the Appellate Court considered a challenge to the proposed establishment of a new community unit school district. 22 Ill. App. 3d at 17-18, 316 N.E.2d at

527. After the superintendent's petition for a referendum vote on the proposed school district was granted, but before the referendum vote was taken, the Board of Education filed suit to enjoin the establishment of the new school district. *Id.* The court held that the Board's action was premature because "[a]t the time the complaint was filed an election still had to be held . . . and thus the formation of the proposed unit school district was not imminent or certain." *Id.* at 21, 316 N.E.2d at 529. Relying on *Slack*, the court held that it "ha[d] no power to render advisory opinions, and until the legislative process has been concluded there is no controversy that is ripe for declaratory judgment." *Id.* at 21, 316 N.E.2d at 529-30. Because the "declaratory judgment action sought to review and the injunction sought to restrain an incomplete legislative process whose results were uncertain," the court concluded that the complaint was "premature and properly dismissed." *Id.* at 22, 316 N.E.2d at 530.

As in *Fletcher*, *Slack* and *Gates*, the plaintiffs' claims are not fit for judicial decision at this time because the legislative process has not concluded. The legislative process begins with the passage of a bill by the General Assembly, but it does not end with the exercise of the Governor's veto. Rather, the Illinois Constitution commands that "[a]n item vetoed shall be returned to the house in which it originated," whereupon the General Assembly may vote to override the Governor's veto by a three-fifths majority vote of each house. ILL. CONST. 1970, art. IV, § 9. If both houses elect to override the Governor's veto within the time allotted, the bill "shall become law" in the form passed by the General Assembly. *Id.* As the Supreme Court noted in *Fletcher*, "[n]o one, or any number of these fundamental requirements less than all, is sufficient. They must all concur before the [appropriations bill] becomes such, or has any validity." 377 Ill. at 95-96, 35 N.E.2d at 332.

Here, the Governor issued his veto message on July 10, 2013. At that time, the General Assembly had already recessed for the summer and did not have an opportunity to vote on whether to override the Governor's veto. (Koppang Aff., ¶ 2.) The Constitution provides that "[i]f recess or adjournment of the General Assembly prevents the return of a bill," the bill and the Governor's objections are returned to the originating house "upon the next meeting of the same General Assembly at which the bill can be considered." ILL. CONST., art. IV, § 9. The next meeting of the General Assembly is not scheduled to occur until October 22, 2013. (Koppang Aff., ¶ 2.) Thus, the time for the General Assembly to override the Governor's veto has not elapsed.

Given the uncertainty as to whether the General Assembly will override the Governor's veto, it would be premature for this Court to insert itself into the legislative process now. In the event the General Assembly elects to override the Governor's veto, the subject appropriations will be restored and the case will be moot. Any determination at this point regarding the effect of the Governor's veto would be an advisory opinion that would not conclusively adjudicate the rights of the parties. Because the plaintiffs seek relief based on an "incomplete legislative process whose results [are] uncertain," the matter is not ripe for review. *Gates*, 22 Ill. App. 3d at 22, 316 N.E.2d at 530.

Similarly, until the legislative process has run its course, the Court will be forced to speculate about the permanence of the Governor's actions and its alleged effects. The plaintiffs correctly note that the Constitution provides that a General Assembly member "shall receive a salary and allowances as provided by law, but changes in the salary of a member shall not take effect during the term for which he has been elected." ILL. CONST., art. IV, § 11. Yet, the veto of appropriations for legislators' compensation does not end the process respecting the

Appropriations Bill or preclude future appropriations. The plaintiffs may still receive a salary for this year and that salary may be the same as what they received the year before. Because the "constitutional issues upon which the opinion of this court is sought may never progress beyond the realm of the hypothetical," the plaintiffs claims are not fit for judicial decision at this time. *See Slack*, 31 Ill. 2d at 178, 201 N.E.2d at 121.

B. The Plaintiffs Will Not Suffer Any Hardship by Deferring Judicial Consideration of Their Claims

The plaintiffs will not suffer any hardship by delaying judicial consideration of their claims because the plaintiffs control their own destiny. As the presiding officers of both houses, the plaintiffs are vested with the constitutional authority to call a special session of the General Assembly to vote on whether to override the Governor's veto. *See* ILL. CONST. 1970, art. V, § 5(b). The plaintiffs could call a special session at any time, but they have chosen not to do so. If the plaintiffs wish to receive their paychecks now, they have a clear and immediate path to relief—call a special session of the General Assembly and override the Governor's veto. Any putative hardship from delaying potential judicial consideration until after the General Assembly votes on an override is a result of the plaintiffs' own inaction.

In addition, declining to address the merits of the plaintiffs' claims at this time is consistent with the "long-standing rule that cases should be decided on non-constitutional grounds whenever possible, reaching constitutional issues only as a last resort." *See People v. Hampton*, 225 Ill. 2d 238, 243, 867 N.E.2d 957, 960 (2007) (quotation omitted); *accord People v. Lee*, 214 Ill. 2d 476, 482, 828 N.E.2d 237, 243 (2005) ("This court will not consider a constitutional question if the case can be decided on other grounds."). Indeed, Illinois law requires that "before deciding a case on constitutional grounds, the court must state, in writing, that its decision cannot rest upon an alternate ground." *In re E.H.*, 224 Ill. 2d 172, 178, 863

N.E.2d 231, 234 (2006); Supreme Court Rule 18(c)(4). Here, the Court need not delve into the constitutional questions raised by the plaintiffs' claims because the hour for doing so has not arrived. Until the General Assembly votes on whether to override the Governor's veto, alternative grounds for the resolution of this action exist. Because this Court should avoid constitutional questions if at all possible, it should decline to address the merits of the plaintiffs' claims until there is a fully ripened case or controversy before it. For these reasons, the plaintiffs' claims should be dismissed as premature.

II. SUMMARY JUDGMENT SHOULD BE GRANTED IN FAVOR OF THE GOVERNOR ON COUNT I BECAUSE THE GOVERNOR'S LINE-ITEM VETO OF APPROPRIATIONS FOR LEGISLATORS' COMPENSATION WAS SUFFICIENT TO STRIKE THOSE APPROPRIATIONS FROM THE APPROPRIATIONS BILL

A. The Governor's Line-Item Veto Struck the Appropriations for Legislators' Compensation, and the Appropriations Bill Cannot Be Construed to Frustrate the Veto's Intended Purpose And Effect

1. The purpose and intent of the veto was clear and is undisputed

On July 10, 2013, the Governor wrote to the Illinois House of Representatives, stating in his message that House Bill 214 was being returned "with line item vetoes in appropriations totaling $13,852,700." The Governor went on to state that "I hereby veto the appropriation items listed below," and then identified each specific vetoed item by the "Amount Enacted" for each and the article, section, page, and line of the bill in which that item appeared. The line items vetoed by the Governor appropriated funds for the salaries of 118 members of the House of Representatives and 59 members of the Senate, as well as additional amounts for party leaders. (Pl. Mem., Ex. B at 1.)

The purpose and intent of the Governor's veto, as expressed in his message to the House, was clear and unmistakable: it was to strike from the Appropriations Bill all appropriations

compensating the members of the General Assembly. No one misunderstood the veto's purpose and intent, least of all the plaintiffs, who heatedly contend in their Complaint and their Memorandum in support of their motion for summary judgment that the Governor's intent is to "entirely eliminate General Assembly members' salaries" (Compl., ¶ 1; *see also* Pl. Mem. at 1-2), and that the effect of the veto has been that the legislators have not received any compensation currently. (Compl., ¶ 26.) The Illinois Comptroller likewise understood the purpose of the veto, and relying upon it, has declined to issue payments for legislator compensation. (*Id.*, ¶ 25.)

Despite the undisputed clarity of the Governor's veto, the plaintiffs contend in Count I of their Complaint that the Appropriations Bill *must* be read so as to disregard the purpose and intent of that veto—indeed, that the Court must construe the Appropriations Bill as requiring the Comptroller to do the opposite of what was intended and pay out the amounts specifically vetoed by the Governor. (Compl., ¶¶ 34-35.) The plaintiffs' topsy-turvy interpretation of the Appropriations Bill derives from the form rather than the substance of the Governor's veto. While acknowledging that the Governor vetoed the specific amounts appropriated for legislator compensation, the plaintiffs point to category totals shown in the text of the Appropriations Bill and contend that, because the line-item veto did not reference the lines on which total amounts were shown, "[t]he Governor did not veto the total amount appropriated for either the legislators' base salaries or the additional salaries paid to party leaders, and those amounts remain in the law today." (Pl. Mem. at 5-6.)

Any argument that attempts to elevate form over substance should at least be accurate and comprehensive on the matter of form—and the plaintiffs' argument is not. First of all, the Governor's veto message expressly stated that it applied to the total amount appropriated,

$13,852,700. Furthermore, as explained below, the Illinois Constitution prescribes no particular form for the effective exercise of the line-item veto, and the form implicitly prescribed by the plaintiffs (which would require an explicit veto of category totals as well as specific item appropriations) would conflict with the constitutional procedures pursuant to which the legislature may address vetoes. The Governor's line-item veto of the Appropriations Bill was in the form he has employed throughout his administration and was consistent with the forms used by his predecessors. It was also consistent with the way the General Assembly amends appropriations bills. Finally, the Governor's approach has the support of case law and other authority, and the plaintiffs have cited nothing to the contrary.

2. The Constitution does not prescribe the form for a line-item veto

Article IV, section 9 of the Constitution says little about the actual contents of a veto. Section 9(b) provides that, "[i]f the Governor does not approve the bill, he shall veto it by returning it with his objections to the house in which it originated." ILL. CONST. 1970, art. IV, § 9(b). Section 9(e) provides, in the case of an amendatory veto, that the bill be returned "with specific recommendations for change." *Id.* at § 9(e). For line-item vetoes, section 9(d) provides only that "[a]n item vetoed shall be returned to the house in which it originated . . . ." *Id.* at § 9(d). The Constitution requires that the "item" be "returned" but is silent on the method or form of that "return" or what, if anything, the Governor need say about the "item."

Naturally, a Governor would want to be clear in the exercise of the veto to avoid confusion about his intent, and the Governor was indisputably clear in the present case. But the veto method implicitly prescribed by the plaintiffs would promote confusion, not clarity. Count I contends that the Governor's veto may be disregarded because he failed to veto the category totals when he vetoed the individual appropriations that aggregate to those totals. The logical

extension of the plaintiffs' argument is that to be effective, a line-item veto must strike the specific item and also strike or reduce the total for the category in which the item was listed, or else the original total will become law as if the veto had never been exercised.

The plaintiffs' approach, if it were the rule, would wreak havoc with the override process prescribed in the Constitution. Section 9(d) provides that a specific veto of a line item may be overridden by a record vote of three-fifths of the members, but a veto of a category total that does not eliminate all appropriations in the category is not a line-item veto, but rather is a reduction, which may be overridden by a vote of a simple majority. The plaintiffs' rule would require the General Assembly to treat the veto of a single appropriation as two separate vetoes, with different majorities required to override each. The framers certainly did not contemplate such an absurd result, the Constitution does not prescribe it, and this Court should not endorse it.

3. The form of the Governor's veto was consistent with past practices

Any doubt as to the efficacy of the form of the Governor's line-item veto of the Appropriations Bill vanishes in light of the well-established custom and practice of the current Governor and his predecessors. As the Supreme Court declared in a case relied on by the plaintiffs, "long and continuous interpretation in the course of official action under the law may aid in removing doubts as to its meaning . . . . especially [] in the case of constitutional provisions governing the exercise of political rights[.]" *Williams v. Kerner*, 30 Ill. 2d. 11, 13, 15, 195 N.E.2d 680, 682 (1964) (quoting *Smiley v. Holm*, 285 U.S. 355 (1932)).

Here, the public record plainly demonstrates that the Governor and his predecessors, in exercising their line-item veto power, routinely did so substantially in the manner in which the Governor vetoed the Appropriations Bill. A sampling of appropriations bills passed by the General Assembly during the period 1981 to 2013 and the veto messages pertinent to each

demonstrates that Governors have vetoed line items by listing the article, section, page and line of the bill, plus the amount enacted, and signaling that the amount was vetoed. (Winick Aff., ¶ 3 & Group Ex. A.) The same sampling reveals no instance in which the veto message also listed the line of the bill on which a category total appeared. (*Id.*)

The long history of this custom and practice puts to rest any question in this case as to the efficacy of the form of the Governor's veto. The Governor did what is routinely done, and the plaintiffs' objection to the veto's form is meritless.

4. The form of the Governor's veto was consistent with the General Assembly's own practice

The form of the Governor's veto was consistent not only with the custom and practice of Governors, but also with the standard practice of the General Assembly in its process of amending appropriations legislation. The "historical practice of the legislature" may assist the court in assessing the formal sufficiency of the veto at issue here. *See Graham v. Illinois State Toll Highway Auth.*, 182 Ill. 2d 287, 312, 695 N.E.2d 360, 372 (1998).

A sampling of appropriations bills from 2011 and 2012 in which line items were changed by the General Assembly during the legislative process reveals that, when line items are changed in an appropriations bill, the total amount for the category in which the item appears is *not* changed on the face of the bill. (Winick Aff., ¶¶ 4-5 & Group Ex. B.)

The practice is so well-established that legislators receive official instruction in it through the Bill Drafting Manual issued by the General Assembly's Legislative Reference Bureau:

> A final point to remember about amendments to appropriation bills is that it is *the line item amounts that control*; the *totals* shown for the line item amounts, if the totals are incorrect, *do not limit or expand the line item amounts in any way* . . . . For this reason, when amending the line item amounts in an appropriation bill, it has been the custom and practice to not amend the totals of line

> item amounts even though changes in one or more line items make those totals incorrect.

LEGISLATIVE REFERENCE BUREAU, *Illinois Bill Drafting Manual*, Dec. 2012, at 139 (emphasis added).

The plaintiffs, who are, respectively, the President of the Senate and the Speaker of the House of Representatives, cannot credibly assert that the Governor's method of vetoing line-item appropriations allows for ambiguity, because that method is entirely consistent with what they themselves require of the members of the bodies over which they preside.

5. Authority supports the form of the Governor's veto

The Supreme Court, in considering an argument similar to that asserted by the plaintiffs in this case, firmly refused to elevate form over substance and soundly endorsed the manner in which a line-item veto was exercised. In *People ex rel. State Board of Agriculture v. Brady*, 277 Ill. 124, 115 N.E. 204 (1917), the Court considered the effect of the Governor's veto of an appropriations bill where the majority of "items" were expressly vetoed but not the section total. Asserting that the section total was nonetheless passed into law, the Board of Agriculture filed suit, arguing that the only "distinct item" of the appropriation was the total, and that the sub-items only signified the "direction" on "how it should be used." *Id.* at 131, 115 N.E. at 206. In rejecting that argument, the Court explained that the term "item" means a "separate particular in an enumeration of a total," and that the items vetoed by the Governor come within that meaning. *Id.* at 131, 115 N.E. at 207. Accordingly, "the Governor had the power to veto the particular items in the bill in question in this case, and, having done so, the items vetoed did not become any part of the law." *Id.* at 132, 115 N.E. at 207. The Court held that the "power given by the Constitution to the Governor to withhold his approval from distinct items" would be rendered meaningless by refusing to give effect to his line-item vetoes. *Id.* at 131, 115 N.E. at 207. *See*

also 1971 Op. Atty. Gen., p. 117 (Illinois Attorney General opinion concluding that a clerical error in an appropriation total should not override the clear intent of the bill, as expressed in the individual line items); *City of Springfield v. Allphin*, 74 Ill. 2d 117, 130, 384 N.E.2d 310, 316 (1978) (giving "considerable weight" to an Attorney General opinion).

The plaintiffs cite no authority for their contention that "even after the Governor's line-item veto, [the Appropriations Bill] appropriates funds to pay legislators' salaries for the entire fiscal year." (Pl. Mem. at 5.) Accordingly, the plaintiffs' attempt to exalt form over substance, intent, and precedent fails. If the merits of this lawsuit are ever reached, summary judgment should be entered on Count I in favor of the Governor.

B. The Governor's Veto Was Not Amendatory and Its Effect Was Not to Convert Item Appropriations to Lump Sum Appropriations

Notwithstanding the Governor's clear and unambiguous veto message, the well-established custom and practice concerning the form of such messages, and the longstanding practice within their own legislative bodies—all of which demonstrate there can be no serious doubt as to the Governor's intent or the purpose and effect of his line-item veto—the plaintiffs contend that "[t]he result of the Governor's line-item veto is a lump sum appropriation for legislators' base salaries and another lump sum appropriation for party leaders' additional compensation." (*Id.* at 6.)

The plaintiffs offer no authority for this reality-denying contention. Instead, the plaintiffs argue strenuously in support of the unremarkable proposition that "[l]ump sum appropriations are a routine feature of appropriations bills." (*Id.*) They engage in a tortuous exercise of patching together, from extrinsic sources, a basis for "adequate direction [to the Comptroller] as to how to spend these [lump] sums of money." (*Id.* at 7-8.)

But it is beside the point whether a lump sum appropriation would be a correct way to provide for legislators' salaries or whether the Comptroller could reasonably figure out what to pay to whom. The General Assembly did not pass the salary appropriation as a lump sum but rather as line items. That is an obvious and uncontroverted fact in this case. The Governor returned the bill to the legislature with what was specifically and expressly a line-item veto under article IV, section 9(d). It was not an amendatory veto under section 9(e). The facts are the facts, and the plaintiffs' imaginative argument cannot transform line-item appropriations to lump-sum appropriations or a line-item veto to an amendatory veto. Because the plaintiffs' theory in Count I is unmoored from fundamental facts about which there is and could be no genuine dispute, the plaintiffs' motion for summary judgment on Count I must be denied, and the Court should enter summary judgment on the Governor's motion.

However, even if the Court were to accept the plaintiffs' implausible theory that the Governor's veto effectively amended the Appropriations Bill to create lump-sum appropriations, the Governor would still be entitled to summary judgment on Count I. If the "result" of the Governor's veto was to amend the Appropriations Bill, section 9(e) makes clear that such an amendment cannot become effective before the General Assembly acts upon it. "If the Governor exercises his amendatory veto powers and returns a bill to the house in which it originated with specific recommendations for change, the legislature must take additional action. The bill is 'passed' when both houses of the legislature have voted to accept the Governor's recommendations for change." *Department of Cent. Mgmt Servs. v. Illinois State Labor Relations Bd.*, 249 Ill. App. 3d 740, 746, 619 N.E.2d 239, 243 (4th Dist.), *appeal denied* 153 Ill. 2d 558 (1993) (citing *Mulligan v. Joliet Regional Port District*, 123 Ill. 2d 303, 316, 527 N.E.2d 1264, 1270-71 (1988)). In Count I, the plaintiffs seek immediate relief in the form of a

declaratory judgment and an order directing the Comptroller to pay legislators' salaries, but such immediate relief would be precluded were their theory to prevail. If the Governor's veto were deemed amendatory, "the legislature must take additional action." *Central Mgmt Servs.*, 249 Ill. App. 3d at 746, 619 N.E.2d at 243. The necessity of additional legislative action defeats the plaintiffs' present claim, and for this further reason, summary judgment should be entered for the Governor.

C. The Doctrine of Constitutional Avoidance Has No Application Here

The plaintiffs' last resort in support of their Count I claim is the doctrine of constitutional avoidance, which cautions courts to avoid interpreting statutes in ways that render them unconstitutional. Here, the plaintiffs assert, if the Court "were to interpret [the Appropriations Bill] as effectively eliminating legislative salaries, then that Act runs afoul of the Illinois Constitution[]," and so the Court should instead construe the statute as providing for a lump sum appropriation. (Pl. Mem. at 10.)

The doctrine of constitutional avoidance, as presented by the plaintiffs, is not relevant to the matter now before this Court. No party has asked this Court to construe the Appropriations Bill as "eliminating legislative salaries," and it is completely inaccurate to say that this or any other appropriations statute "eliminates" anything. Appropriations statutes *authorize spending* for certain items and leave other items—often many other items—unprovided for. The fact that the Appropriations Bill, after the Governor's line-item veto, does not provide for legislative salaries does not render the Bill and its myriad other appropriations unconstitutional. Even if the plaintiffs had a legitimate constitutional claim—and as shown in both the previous and following sections of this memorandum, they do not—that claim would not be that legislators have a constitutional right to have salaries appropriated in the Appropriations Bill or any particular

statute. An appropriation effected through a concurrent or subsequent statute would satisfy their alleged constitutional right. *Cf. People ex rel. Ill. Fed'n of Teachers v. Lindberg*, 60 Ill. 2d 266, 326 N.E.2d 749, *cert. denied*, 423 U.S. 839 (1975) (constitutional provision against diminishment or impairment of pension benefits for public employees did not confer right to specific funding level and was not violated by Governor's reduction and line-item vetoes of appropriations for such pension plans). Thus, within the scope of the present case, the court cannot construe the Appropriations Bill in such a way that the statute would "run afoul of the Illinois Constitution."

The plaintiffs' purported grievance, after all, is not with the Appropriations Bill but with the Governor's veto. The constitutional issue here is not what the Appropriations Bill *says*, but what the Governor *did*. The doctrine of constitutional avoidance has no application to official action. The plaintiffs no doubt have urged the doctrine upon the Court because they rightly believe this Court may be wary of deciding on constitutional grounds a politically charged dispute between two branches of government, but the promise of "avoidance" they offer is wholly illusory. Were the Court to accept the plaintiffs' invitation to read the Governor's veto out of the Appropriations Bill and read the vetoed items back in, the Court would be deciding the constitutional issue, not avoiding it.

The better way—indeed, the only way—to avoid the constitutional issue in this case is to dismiss the case on grounds of ripeness, as set forth above. But in all events, Count I fails to present a coherent claim based on statutory construction or otherwise, and the Governor's motion for summary judgment should be granted.

III. THE GOVERNOR'S VETO WAS AUTHORIZED BY HIS EXPRESS CONSTITUTIONAL AUTHORITY TO "VETO ANY ITEM OF APPROPRIATIONS"

A. The Line-Item Veto Power Contained in Article IV, Section 9(d) Extends to Appropriations for Legislators' Compensation

Article IV, section 9(d) of the 1970 Constitution expressly confers authority on the Governor to "veto *any* item of appropriations . . . ." (Emphasis added.) This provision imposes no limits on the kind of appropriations that may be vetoed. "Any" means just that.

The plaintiffs seek to impose limits on the Governor's line-item veto authority that are not contained in article IV, section 9(d). Relying on *Fergus v. Russel*, 270 Ill. 304, 110 N.E. 130 (1915), they argue that "the Governor's veto power must be narrowly construed . . . ." (Pl. Mem. at 11.) *Fergus* says nothing of the sort. It involved a challenge, under the 1870 Constitution, to a Governor's attempt to reduce the amount of certain appropriations. Unlike the 1970 Constitution, the 1870 Constitution did not confer the Governor with reduction veto power. In concluding that the Governor's action was not authorized by the 1870 Constitution, the Supreme Court simply held that "[t]he Governor . . . is forbidden to exercise any legislative [veto] function except that expressly provided in the Constitution." *Id.* at 349, 110 N.E. at 148. Nothing in *Fergus*, however, suggests that there are any limits on veto power that *is* expressly provided in the Constitution. *See Lindberg*, 60 Ill. 2d at 276, 326 N.E.2d at 754 (observing that the "result [in *Fergus*] would not occur under our present State Constitution").

The Supreme Court has explicitly recognized that the Governor's veto authority under the 1970 Constitution extends to the compensation of legislators. *Quinn v. Donnewald*, 107 Ill. 2d 179, 483 N.E.2d 216 (1985), involved a challenge to the mechanism in the Compensation Review Act, 25 ILCS 120/1 *et. seq.*, for determining the compensation of members of the General Assembly and various other government officials. The Court upheld the

constitutionality of the Act, noting that any concerns about the adequacy of the constraints on the legislative and other salaries set by the Compensation Review Board were tempered by "article IV, section 9(d), which gives the Governor the 'item-reduction veto,' whereby the Governor may reduce or veto any single item within an appropriation bill . . . ." 107 Ill. 2d at 191, 483 N.E.2d at 222.

Given that the veto authority contained in article IV, section 9(d) extends to "any item of appropriation," including those for the compensation of legislators, the question becomes whether there is another provision in the Constitution that, in this context, trumps the Governor's veto power. The following discussion demonstrates that the Constitution does, indeed, provide the General Assembly with a trump card—one in the form of a veto override. But the absence of any constitutional provision prohibiting the Governor from vetoing an appropriation for legislators' compensation means that the courts cannot relieve the members of the General Assembly from the consequences of any veto that they choose not to override.[1]

B. The Constitutional Provision Regulating the Salaries of Members of the General Assembly Merely Prohibits Increases During Their Term of Office

1. The interpretation of article IV, section 11 espoused by the plaintiffs conflicts with the framers' intent and the plaintiffs' own actions and pronouncements

The plaintiffs argue that the Governor's veto violates article IV, section 11 of the Constitution. They are wrong because that provision only limits *increases* in legislators' salary. The dominant role played by the General Assembly in the legislative process, including the power to pass legislation affecting their own salaries and to override any gubernatorial vetoes,

[1] The plaintiffs go to great lengths to argue, repeatedly, that the validity of the Governor's veto is subject to judicial review. (Pl. Mem. at 12-13, 16-19.) This is a non-issue. The Governor agrees that, should this case develop into a ripe controversy, the courts can decide the validity of the challenged veto.

required protecting the public against legislators' ability to raise their own pay, but obviated the need to protect the legislators against decreases. The requisite public protection was included in article IV, section 11, which provides:

> A member [of the General Assembly] shall receive a salary and allowances as provided by law, but changes in the salary of a member shall not take effect during the term for which he has been elected.

ILL. CONST. 1970, art. IV, § 11.

The reference to "changes" in article IV, section 11 means "increases." This was explained by delegate William J. Laurino when he introduced this provision at the 1970 Constitutional Convention:

> There are two ingredients in the proposed change: first, compensation and allowances shall be set by law, and second, no change in either salary or allowances shall become effective during the term for which a member has been elected. *He cannot benefit from a pay raise until he is selected for another term*, or reelected for another term. Although members of the General Assembly have been able to approve, under the existing constitutional provision, changes in their salary, they have been crippled by the inflexible constitutional provisions from providing the allowances for necessary and essential expenses incurred while performing official legislative duties.
>
> And actually, *the final clause of the section [11] should prove sufficient protection against danger that they may—legislators meaning they—might run wild with their own salaries*, because it needs an intervening election before it becomes effective.

SIXTH ILLINOIS CONSTITUTIONAL CONVENTION, *Record of Proceedings* (July 15, 1970), p. 2705 (emphasis added) (Ex. E to Koppang Aff.).

It should be recognized that article IV, section 11 does not flatly prohibit members of the General Assembly from increasing their own pay. Rather, as alluded to by delegate Laurino, this provision deters members from voting themselves excessive pay hikes by ensuring that, before any increase becomes effective, the electorate will have an opportunity to decide whether to

retain members who supported the increase. The deferred effective date of changes to members' salaries illustrates that this constitutional provision is directed at increases, as the self-dealing targeted by article IV, section 11 does not justify deferring any decreases in legislators' compensation.

The General Assembly itself, including the plaintiffs in this lawsuit, have recognized that article IV, section 11 merely regulates increases in legislators' salaries. More than a year before Governor Quinn imposed a line-item veto on appropriations for legislators' compensation, Senate President Cullerton expressly acknowledged that, unlike the constitutional provision that prohibits judges' salaries from being "diminished," the Constitution prohibits legislators' salaries from being raised during their term of office. In an interview with the editorial board of the *State Journal-Register*, President Cullerton, a practicing lawyer, explained this distinction as follows:

> [T]here is a provision in the Constitution, as it should be, that says judges' compensation shall not be diminished. The legislature has a separate provision in the Constitution that says our salaries cannot be changed. I'm sure the framers of the Constitution meant by that that it can't be raised while you're in your term.

Interview of Illinois State President John J. Cullerton by the editorial board of the *State Journal-Register* on February 4, 2012, at 19:10-33. (Koppang Aff., Ex. F.)

Senator Cullerton was right. Unlike the constitutional prohibition against diminishing judicial salaries, article IV, section 11 merely prohibits raising legislators' salaries during their term of office. This understanding regarding the meaning of article IV, section 11 is shared by Speaker Madigan and the other members of the General Assembly. In 2009, the General Assembly enacted P.A. 96-45, which decreased legislators' compensation by a provision stating that, "[d]uring the fiscal year beginning on July 1, 2009, every member of the General Assembly is required to forfeit 12 days of compensation." 25 ILCS 115/1.5. The bill containing that provision enjoyed overwhelming support. It passed the House of Representatives by a vote of

114 in favor, zero against, zero present, and four excused absences, with Speaker Madigan among those voting in favor. *See* House Roll Call re SB 1912 (July 15, 2009) (Koppang Aff., Ex. C). The Senate vote was equally lopsided. The Senate concurred in the House amendment to that bill by a vote of 55 yeas, zero nays, 1 present, and 3 not voting. President Cullerton was among those voting in favor. *See* Senate Concurrence in House Amendment to S.B. 1912 (July 15, 2009) (Koppang Aff., Ex. D). The General Assembly passed similar bills reducing members' compensation in each of the next four years. *See* 25 ILCS 115/1.6 (Fiscal Year 2011); 25 ILCS 115/1.7 (Fiscal Year 2012); 25 ILCS 115/1.8 (Fiscal Year 2013); and 25 ILCS 115/1.9 (Fiscal Year 2014).

This historical practice lends additional support to the conclusion that article IV, section 11 only limits increases in legislators' salaries. *See Graham*, 182 Ill. 2d at 312, 695 N.E.2d at, 372 ("the historical practice of the legislature may aid in interpretation of a constitutional provision"); *Williams*, 30 Ill. 2d. at 15, 195 N.E.2d at 682 (upholding Governor's veto where historical interpretation of constitutional provision "may aid in removing doubts as to its meaning . . . , especially . . . in the case of constitutional provisions governing the exercise of political rights" (quoting *Smiley v. Holm*, 285 U.S. 355 (1932)). The novel and expedient interpretation of article IV, section 11 adopted by the plaintiffs in this litigation comes too late to upset the recognized meaning of that provision.

2. None of the authorities cited by the plaintiffs supports their current interpretation of article IV, section 11

The plaintiffs claim that, in *People ex rel. Millner v. Russel*, 311 Ill. 96, 142 N.E. 537 (1924), "the Supreme Court foresaw the potential havoc that could result from the line-item veto," as applied to appropriations for the salaries of state officers. (Pl. Mem. at 11-12.) In reality, *Millner* supports Governor Quinn's authority to veto appropriations for members of the

General Assembly. Although the Court may have questioned the *wisdom* of a Governor vetoing "appropriations to pay salaries of any or all state officers," it upheld the *power* of the Governor to do so:

> The language [of the veto power in the 1870 Constitution] is direct, plain, and affords no basis for the construction that bills or items of bills making appropriations for salaries of officers of the state government were intended to be excepted from bills the Governor has power to veto.

Id. at 99-100, 142 N.E. at 538. Like the veto provision involved in *Millner*, the language of article IV, section 9(d) is direct, plain, and affords no basis for excepting appropriations to state officials from "any item of appropriations" that the Governor is empowered to veto.

The plaintiffs fare no better with their reliance on the Illinois Supreme Court's decision in *Jorgensen v. Blagojevich*, 211 Ill. 2d 286, 811 N.E.2d 652 (2004), which they cite for the truism that "the Governor's veto authority over appropriations cannot be used in a manner that violates a Constitutional salary provision." (Pl. Mem. at 12.) No power, veto or otherwise, can be used in a manner that violates the Constitution. But the salient aspect of *Jorgensen* is that the constitutional salary provision involved in that case was the one stating that judges' salaries shall not be "diminished." As President Cullerton observed, that provision means the opposite of article IV, section 11, which prevents raising legislators' salaries during their term of office. (Koppang Aff., Ex. F at 19:10-33.) A veto directed at judges' salaries impermissibly diminishes those salaries, but a veto of appropriations for legislators' salaries is entirely consistent with the prohibition against raising those salaries during the legislators' term of office.

The *Jorgensen* Court echoed that distinction when it rejected the defendants' reliance on *Quinn v. Donnewald*, which as previously noted relied on the existence of a line-item veto as one of the controls on the recommendations of the Compensation Review Board as to the compensation of legislators and other officials. *Quinn*, 107 Ill. 2d at 191, 483 N.E.2d at 222.

Although vetoes can be applied to appropriations to legislators' salaries, different considerations apply to vetoes of judicial salaries:

> [T]he prohibition against diminishment of judicial salaries and the doctrine of separation of powers place judicial salaries in a qualitatively different legal posture than salaries paid to other state officers and employees. The unique constitutional limitations governing changes in judicial salaries were not considered by the court when it decided *Quinn*.

Jorgensen, 211 Ill. 2d at 308-09, 811 N.E.2d at 665.

The "qualitatively different legal posture" of *Jorgensen* related to the importance of the prohibition against diminishing judges' salaries to preserving the independence of the judiciary. The Court emphasized that the ability of the three branches of government to withstand incursions from their coordinate branches differs significantly, with the judicial branch being "the most vulnerable." *Id.* at 300, 811 N.E.2d at 660. Harkening to Alexander Hamilton's famous observation in *The Federalist, No. 78*, that "the judiciary is beyond comparison the weakest of the three departments of power," the Court declared that "[o]ne of the principal means by which the founding fathers sought to protect the judiciary was by denying to the other branches of government the power to diminish judicial compensation." *Jorgensen*, 211 Ill. 2d at 301, 811 N.E.2d at 661. In light of the "clear and unconditional" terms of the prohibition against the diminishment of judicial salaries contained in article VI, section 14, the Court held that the judges' salaries were unconstitutionally diminished when the General Assembly passed a bill suspending the judicial cost of living adjustments ("COLAs") for Fiscal Year 2003 and the Governor used a reduction veto to eliminate the judicial COLAs for Fiscal Year 2004. *Id.* at 305-17, 811 N.E.2d at 663-80.

This case is easily distinguishable from *Jorgensen*. Rather than involving application of a veto to the constitutional prohibition against judges salaries being "diminished," this case

involves line-item vetoes of appropriations to legislators subject to a constitutional provision restricting increases in their salaries during their terms of office. Nor do the separation of powers concerns that prompted the *Jorgensen* Court to protect the weak and vulnerable judicial branch apply to the position occupied in this case by the legislative branch, which has both the first word (by passing the appropriation) and the last word (by responding to Governor's veto) on appropriations bills for legislative salaries. Unlike judges, legislators do not confront the risk that another branch of government will pass an appropriations bill, against their collective will, reducing their salaries. And unlike judges, legislators have the power to override any gubernatorial veto of that appropriation.

The linchpin of the plaintiffs' argument that the Governor's veto is unconstitutional is their assertion that "the legislative salary clause of Article IV, Section 11 prohibits all mid-term 'changes' in salaries, *thus prohibiting both mid-term salary increases and reductions.*" (Pl. Mem. at 14-15 (emphasis added).) The plaintiffs fail to cite a single case that endorses this interpretation of article IV, section 11. This is not surprising, given the muted separation of powers issues pertaining to decreases in legislators' salaries, the contrary interpretation discussed at the 1970 Constitutional Convention, and the previous recognition by the plaintiffs and other members of the General Assembly by their own legislative activities that legislators stand on a different constitutional footing from judges in terms of being protected against diminished compensation.

None of the cases cited by the plaintiffs discussing other constitutional provisions support their interpretation of article IV, section 11. *People ex rel. Northrup v. Council of City of Chicago*, 308 Ill. App. 284, 31 N.E.2d 337 (1st Dist. 1941), held that an ordinance which reduced aldermanic salaries violated article IX, section 11 of the 1870 Constitution. That

provision, however, expressly stated that the compensation of a municipal officer serving a definite term of office shall not "be increased *or diminished* during such term." ILL. CONST. of 1870, Article IX, § 11 (emphasis added). Here, on the other hand, article IV, section 11 only prohibits increases.

The same distinction applies to the unreported New York trial court decision in *Dugan v. Pataki*, No. 16341/95 (Sup. Ct. Kings Cty. 1995). The court held that the omission of any appropriation for legislators' salaries in the temporary appropriations bill submitted by the New York Governor violated the provision of the New York Constitution protecting legislators' salaries from being "increased or diminished" during their term of office. N.Y. CONST., art. III, § 6. The Illinois Constitution, on the other hand, does not contain a similar prohibition against decreases to legislators' salaries. Furthermore, the separation of powers issues were far more acute in *Dugan* than they are here because the New York legislature had no recourse from the Governor's action. *See* N.Y. Const., art. VII, § 5 (absent a message of necessity from the Governor, the legislature may not act on an interim appropriations bill). Whereas, here, the General Assembly does have recourse—a potential override that is explicitly set out in the Illinois Constitution and currently lies squarely in the General Assembly.

In short, because article IV, section 11 of the 1970 Constitution does not restrict decreases to legislators' salaries, that provision does not limit the Governor's authority under article IV, section 9(d) to "veto any item of appropriations." The Governor's veto is valid.

C. The Governor's Veto Comports with the Allocation of Powers Between the Legislative and Executive Branches Created by the Constitution

Although the plaintiffs assert that the Governor's veto violates the doctrine of separation of powers embodied in article II, section 1 of the Constitution, they do not assert a stand-alone violation of that provision independent of the alleged violation of the legislative salary provision

contained in article IV, section 11. This means that the plaintiffs' separation of powers argument falls with their argument concerning article IV, section 11.

There is good reason for this. It is axiomatic that a more specific provision in the Constitution takes precedence over a more general provision addressing the same subject. *E.g.*, *People v. Richardson*, 196 Ill. 2d 225, 230-31, 751 N.E.2d 1104, 1107-08 (2001) ("All parts of the constitution must be construed together . . . . [A] specific constitutional provision will prevail over a general section if the two are incompatible.").

The specific provisions of the Constitution regarding the scope of the Governor's veto power, the General Assembly's ability to override such vetoes, and the limits on mid-term increases in legislators' salaries define the allocation of power between the legislative and executive branches with respect to those subjects. Consequently, the general statement in article II, section 1, that "[n]o branch shall exercise powers properly belonging to another," does not override the more specific provisions defining exactly what constitutional powers properly belong to what branch in connection with vetoes, overrides, and legislative salaries. *See People ex rel. Ogilvie v. Lewis*, 49 Ill. 2d 476, 489, 274 N.E.2d 87, 95 (1971) ("To the extent that there is any conflict in this case between this specific constitutional provision [in section 9(b) of article IX] and the more general provision of section 8(d) of article IV concerning appropriation bills, we believe that the more specific provision of section 9(b) of article IX should take precedence.").

Accordingly, the plaintiffs are unable to identify any constitutional provision that overrides the Governor's express authority, pursuant to article IV, section 9(d), to issue a line-item veto with respect to any item of appropriation. As a consequence, if the Court were to reach

the merits of the plaintiffs' claims, it should enter summary judgment in favor of the Governor on Count II of the Complaint.

CONCLUSION

For the foregoing reasons, Governor Quinn respectfully requests that the Court grant his motion for summary judgment by: (1) dismissing the Complaint in its entirety on the basis that the controversy is premature; or, in the alternative (2) entering judgment in his favor on Counts I and II of the Complaint.

Dated: August 30, 2013

Respectfully submitted,

GOVERNOR PAT QUINN

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Appendix G

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

JOHN J. CULLERTON, individually and in his official capacity as President of the Illinois Senate, and MICHAEL J. MADIGAN, individually and in his official capacity as Speaker of the Illinois House of Representatives,	)	
Plaintiffs,	)	
v.	)	No. 2013 CH 17921
PAT QUINN, Governor of the State of Illinois, in his official capacity, and JUDY BAAR TOPINKA, Comptroller of the State of Illinois, in her official capacity	)	
Defendants.	)	

PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT AND RESPONSE TO DEFENDANT QUINN'S SUMMARY JUDGMENT MOTION

Plaintiffs JOHN J. CULLERTON and MICHAEL J. MADIGAN, by their counsel, Kevin Forde, Richard J. Prendergast, Michael Kasper, Eric Madiar, and Heather Wier Vaught, state as follows for their reply in support of their Motion for Summary Judgment and in response to Defendant Quinn's Motion for Summary Judgment:

I. Introduction.

In this Memorandum, Plaintiffs will address the three main points raised by Defendants Quinn and Topinka through their respective pleadings. First, Plaintiffs will address Defendant Quinn's argument that the matter should be dismissed because it is not ripe for resolution. In her pleading, Defendant Topinka, through the Attorney General, did not argue ripeness.

Second, Plaintiffs will respond to both Defendants' arguments concerning Count I, namely whether the legislation, after the Governor's line-item veto, provides sufficient direction to the Comptroller to pay members of the General Assembly their monthly salaries and stipends. In short, Plaintiffs make the straightforward argument that words and numbers should be given their plain and simple meanings. Plaintiffs should prevail on Count I because the plain meaning of the statute provides the Comptroller sufficient direction to make those payments. Defendants' replies, on the other hand, amount to nothing more than "custom and practice" arguments that seek to avoid addressing the plain language of the appropriations bill in favor of a bureaucratic "that's way we've always done it" shrug.

Finally, this Memorandum will address Governor Quinn's constitutional argument that the word "changes" as it appears in the Article IV, Section 11 of the Constitution does not really mean what it says, but instead means something altogether different. For the Governor to prevail on Count II, he must convince this Court that when the Constitutional Convention adopted, and the voters ratified, the 1970 Constitution, the word "changes" did not really mean "changes" but instead meant "increases."

Plaintiffs, on the other hand, simply assert that the words contained in both Public Act 98-64 (Count I) and Article IV, Section 11 of the Constitution (Count II) should be given their plain and ordinary meaning, and that doing so will lead to judgment in their favor.

II. Argument.

A. The Matter is Ripe for Resolution.

Governor Quinn claims that this case should be dismissed because it is "not ripe for review." (Def. Quinn Mem. p. 6.) In support of this argument, the Governor cites three cases, none of which are helpful to his argument. First, in *Fletcher v. City of Paris*, 377 Ill. 89, 35

N.E.2d 329 (1941), the Supreme Court declined to enjoin a referendum vote concerning a construction project *before* it had been voted into effect by the voters. Likewise, in *Slack v. City of Salem*, 31 Ill.2d 174, 201 N.E.2d 119 (1964), the Supreme Court refused to prohibit the issuance of referendum based bonds *before* the vote to authorize the bonds had been presented to the voters. Finally, in *Board of Educ. of Addison Sch. Dist. No.4 v. Gates*, 22 Ill. App. 3d 16, 316 N.E.2d 525 (2nd Dist. 1974), the Appellate Court refused to enjoin the creation of new school district *before* the referendum question was put to the voters.

What each of these cases has in common with one another, and that is absent here, is that the courts declined intervention before the question had any legal effect. In other words, the courts did not get involved because there was no construction project (*Fletcher*), no bonds (*Slack*), or a new school district (*Gates*) to be challenged. In this case, on the other hand, the Governor has already issued his veto. Plaintiffs, and their colleagues, are already being denied their salaries and stipends. As a result, Plaintiffs here are challenging the legal effect of Public Act 98-64, which has already become law, and the Governor's veto action *after* it has occurred, not before. *Fletcher*, *Slack*, and *Gates* would support a ripeness argument if Plaintiffs were seeking to enjoin the Governor from issuing the veto *before* he issued it, but not after. In the three cases cited by the Governor, the courts refused to enjoin a referendum that, if passed, would have changed the legal status quo. In this case, in contrast, Plaintiffs are seeking to change the legal status quo (the denial of their compensation) that has already taken effect.

Next, Governor Quinn argues that the matter is not ripe because the legislative process has not "run its course" and that, until it has, Plaintiffs' claims remain "hypothetical." Def. Quinn. Mem., p. 9. This will come as a surprise to the legislators (and their families), who now have not been paid for two months. Perhaps their banks can issue hypothetical credits to their

accounts so that they can write hypothetical checks to pay their very real monthly bills. It will also come as a surprise to his Co-Defendant, Treasurer Topinka, who has refused to pay Plaintiffs and their colleagues based upon the Governor's real, and not hypothetical, line-item veto.

Governor Quinn's ripeness argument boils down to speculation that the General Assembly might override his line-item veto. That speculation is the only thing about this case that is hypothetical: the General Assembly might override the Governor, but it might not. (Indeed, it has no obligation to even consider to do so). That speculation, however, is irrelevant to the matter before the Court. In Count I, Plaintiffs allege that Defendant Topinka is violating the plain directive of Public Act 98-64 by refusing to issue legislators their salaries and stipends. This violation is on-going and not dependent on future action, if any, by the General Assembly. In Count II, Plaintiffs assert that the Governor's line-item veto violated the Constitution. That violation occurred when the Governor issued the line-item veto, Ill.Const. 1970, art. IV, § 9(d).

The Supreme Court recognized this proposition in *Jorgensen v. Blagojevich*, 211 Ill. 2d 286, 309, 299, 811 N.E.2d 652, 665-66 (2004). In *Jorgensen*, the Governor attempted to use his reduction veto to lower the amount appropriated for judicial compensation in the fiscal year 2004 budget despite the constitutional provision that judicial salaries could "not be diminished" midterm. *Id.* at 291, 811 N.E.2d at 656. The timeline of events in *Jorgensen* demonstrates why Governor Quinn's ripeness argument here must fail. The General Assembly passed an appropriation for judicial salaries and the Governor issued a reduction veto on July 3, 2003. *Id.* at 291, 811 N.E.2d at 656. Fifteen days later, on July 18, the Supreme Court, *sua sponte*, ordered the Administrative Office of the Courts to nonetheless submit vouchers to the Comptroller to process judicial salaries at the full amount of the appropriation. *Id.* at 292, 811 N.E.2d 656. The

Court, also *sua sponte*, issued a second order to the same effect on July 24, 2003. *Id.* All of this occurred within three weeks of the Governor's reduction veto, and more importantly, well within the window of time in which the General Assembly could have overridden the veto. *See* Ill.Const. 1970, art. IV, § 9(b)("If recess or adjournment of the General Assembly prevents the return of a bill, the bill and the Governor's objections shall be filed with the Secretary of State within such 60 calendar days. The Secretary of State shall return the bill and objections to the originating house promptly upon the next meeting of the same General Assembly at which the bill can be considered."). Indeed, the Supreme Court issued these orders despite the Comptroller's protestations that he could not process the full payments "unless and until the General Assembly decided to override the Governor's reduction veto." *Id.* at 292, 811 N.E.2d at 656.[1]

The following day, and also well within the window for a legislative override, the *Jorgensen* plaintiffs filed suit. *Id.* at 292-93, 811 N.E.2d at 656-57. The lawsuit also involved a second issue regarding legislation passed by the General Assembly that reduced judicial compensation in the fiscal year 2003 budget. *Id.* at 291, 811 N.E.2d at 656. In ruling for the plaintiffs on the question of the fiscal year 2003 salary reduction, the Supreme Court held that legislation reducing judicial compensation was "unconstitutional in its entirety, the statute has no force or effect. It is void *ab initio.* It is as if the law had never been passed." *Id.* at 309, 811 N.E.2d at 665-66. In ruling for the plaintiffs regarding the 2004 salary reduction, the Supreme Court similarly concluded the Governor's "reduction veto was unconstitutional. As such, it has no force or effect. That being the case, it did not operate to reduce the funding for judicial salaries..." *Id.* at 311, 811 N.E.2d at 667.

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[1] The Court subsequently vacated these original orders on grounds unrelated to ripeness. *Id.* at 295, 811 N.E.2d at 658.

In other words, the unconstitutional reductions in judicial salaries were void *ab initio* and to be treated as if they had never passed (in the case of the fiscal year 2003 legislation) or issued (in the case of the fiscal year 2004 reduction veto). Nowhere in *Jorgensen* does the Supreme Court even hint at any doubts about the ripeness and justiciability of the plaintiffs' claims. In this case, Governor Quinn's line-item veto was similarly void *ab initio*. Because the line-item veto was void from the beginning, it cannot become void only upon the occurrence or non-occurrence of another future event. The line-item veto was unconstitutional the moment it was issued. Therefore, the matter is ripe for review.

The basic rationale of the ripeness doctrine is to "prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." *Morr-Fitz, Inc. v. Blagojevich*, 231 Ill.2d 474, 490, 901 N.E.2d 373, 384 (2008), *citing Abbott Laboratories v. Gardner*, 387 U.S. 136, 148-49 (1967). Governor Quinn's line-item veto was "formalized" when Public Act 98-64 went into effect and Defendant Topinka refused to issue legislators their August, and now, September paychecks. Moreover, it is hard to imagine the effect of a law being felt in a more "concrete way" than is happening to legislators today. They are not being paid for the work that they do for their constituents every day, contrary to a specific and straight-forward provision of the Illinois constitution.

The Supreme Court formulated a two-prong ripeness test: "first, courts look at whether the issues are fit for judicial decision; and second, they look at any hardship to the parties that would result from withholding judicial consideration." *Morr-Fitz, Inc.*, 231 Ill.2d at 490, 901 N.E.2d at 384. As for the first factor, the Supreme Court has held that claims are fit for judicial

decision when they are "essentially legal in nature—whether the language of the rule violates the constitution and must therefore be declared void, as well as whether the rule violates various Illinois and federal statutes..." *Id.* at 491, 901 N.E.2d at 385. Here, too, the claims are "essentially legal in nature" because they challenge the legal sufficiency of Public Act 98-64 and the Governor's line-item veto and whether they violate the Illinois Constitution or the statutes governing payment of legislative salaries. As for the second prong of the ripeness test, the Supreme Court has held that there was a sufficient hardship that affected the plaintiff in a "concrete way" where a government action causes a "plaintiff to lose financially." *Id., citing Alternate Fuels, Inc. v. Director of Illinois E.P.A.*, 215 Ill.2d 219, 233, 830 N.E.2d 444, 452 (2004)(plaintiff suffering financial loss "has already felt a direct and palpable injury and has an immediate financial stake in the resolution of the instant action.").

Finally, Governor Quinn's ripeness argument is predicated on a misunderstanding, or mischaracterization, of the Constitution's legislative article. Governor Quinn suggests that the case is not ripe because Plaintiffs "control their own destiny." (Def. Quinn Mem., p. 10). He goes on to say that "if plaintiffs wish to receive their paychecks now" they can simply "call a special session of the General Assembly and override the Governor's veto." *Id.* This statement is simply incorrect.

While Plaintiffs, as the presiding officers of their respective chambers, have the constitutional authority to call a special session (Ill.Const. 1970, art. IV, §5(b)), they have no constitutional authority, despite the Governor's statements to the contrary, to independently "override the Governor's veto." An override of the Governor's line-item veto requires an affirmative vote by a three-fifths majority of both the House and the Senate. Ill.Const. 1970, art. IV, § 9(d); 9(c). As there are 118 Representatives, and 59 Senators, (Ill.Const. 1970, art. IV, §

1), Plaintiffs are reliant upon the concurrence of 70 other Representatives and 35 other Senators before the Governor's veto can be overridden. Moreover, although President Cullerton, in concert with Speaker Madigan, could call the Senate into special session, the Senate is powerless to override the Governor's veto until 71 members of the House vote to do so first. Ill.Const. 1970, art. IV, § 9(d)("An item vetoed shall be returned to the house in which it originated and may become law in the same manner as a vetoed bill.")

As a result, Plaintiffs do not "control their own destiny" as the Governor claims. The Defendants' actions have violated Plaintiff's rights by denying them their rightful salaries. As a result of this financial loss, Plaintiffs have suffered a concrete impact that renders this matter ripe for judicial consideration.

B. Plaintiffs Should be Granted Summary Judgment on Count I Because the Words and Numbers of Public Act 98-64 Should Be Given Their Plain and Ordinary Meaning.

Public Act 98-64, after the application of the Governor's line-item veto, reads as follows:

> The following named sums, or so much thereof as may be necessary, respectively, are appropriated to the State Comptroller *to pay certain officers of the Legislative Branch* of the State Government, *at the various rates prescribed by law*:
>
> Officer and Members of the General Assembly
>
> Total.....$11,713,900
>
> For additional amounts, *as prescribed by law, for party leaders* in both chambers as follows:
>
> Total.....$ 2,138,800

P.A. 98-64, pp. 74-76 (emphasis added). The Attorney General's Response correctly points out that an appropriation must contain a "separate and distinct item" that has a specific "object and purpose." 30 ILCS 105/13. The Attorney General concedes that the Comptroller has the "ability

to calculate each legislator's salaries," but nonetheless claims that she cannot pay them because the Public Act 98-64 does not contain a "permissible object and purpose." (Def. Topinka Mem., p. 9).

A plain reading of the statutory language makes clear, however, that the object and purpose of the appropriation is readily discernible from the language remaining in the Act. The "object" of the first appropriation is "certain officers of the Legislative Branch" more specifically identified as the "Officers and Members of the General Assembly." P.A. 98-64, pp. 74-75. The "object" of the second appropriation is the legislative "party leaders." *Id.* at 75. The "purpose" of the both appropriations is to "pay" those officers. *Id.* at 74.

As discussed in greater length in Plaintiffs opening memorandum, the Comptroller need only apply the provisions of the General Assembly Compensation Act to calculate how much to pay, to whom, and how often. 25 ILCS 115/1.[2] The Attorney General does not dispute the logic of this simple reading, but instead separates the vetoed language from the remaining language. The vetoed language reads as follows:

> For salaries of the 118 members of the House of Representatives at a base salary of $67,836 7,766,100
>
> For salaries of the 59 members of the Senate at a base salary of $67,836 3,947,800
>
> For the Speaker of the House, the President of the Senate and Minority Leaders of both Chambers 104,900
>
> For the Majority Leader of the House 22,200
>
> For the eleven assistant majority and minority leaders in the Senate 216,800

[2] Governor Quinn claims that the simple process of applying the General Assembly Compensation Act to the appropriation legislation is a "tortuous exercise of patching together from extrinsic sources" (Def. Quinn Mem., p. 17), but it is no more complicated than what the Comptroller is already doing to calculate judicial salaries which were similarly appropriated in total amounts.

For the twelve assistant majority
and minority leaders in the House 206,900

For the majority and minority
caucus chairmen in the Senate 39,500

For the majority and minority
conference chairmen in the House 34,500

For the two Deputy Majority and the two
Deputy Minority leaders in the House 75,600

For chairmen and minority spokesmen of
Standing committees in the Senate
except the Committee on Assignments 532,000

For chairmen and minority spokesmen of
standing and select committees in the House 906,400

P.A. 98-64, pp. 74-75.

Neither Defendant asserts that, the appropriations bill would have been insufficient to authorize payment of legislators' salaries *before* the Governor issued his line-item veto. Thus, the critical question becomes, what language was excised by the Governor's pen that suddenly converted this legislation from sufficient authorization to insufficient? What information did the Comptroller possess in the original bill that she now lacks post-veto, that is such a game changer that she is now unable to pay legislators? The answer is nothing.

The remaining language directs the Comptroller to pay salaries and stipends as provided by law – *i.e.*, in accordance with the General Assembly Compensation Act. Thus, if the Comptroller were to apply the General Assembly Compensation Act provisions to only the remaining language, she would still have sufficient appropriation authority to expend $104,900 for salaries for the Speaker of the House, the President of the Senate and the two Minority Leaders. With or without the vetoed language – the result should be exactly the same. The

legislators are paid the same amounts, at the same time, over the same period. As to why the remaining language (what she characterizes as the "introductory phrase") does not contain such an adequate "object and purpose," the Comptroller offers no textual analysis, instead merely observing that "the Comptroller's historic practice has not been to treat a line-item vetoed appropriation in this manner." (Def. Topinka Mem., p. 9, fn 2).

The Governor's response is equally unpersuasive. The Governor begins by stressing that he really meant to veto the legislators' salaries and stipends. (Def. Quinn Mem., p. 11). Plaintiffs do not dispute that is what the Governor intended to do, but do dispute that he actually did it. Governor Quinn relies upon the Governor's veto message for the shaky proposition that the Governor's veto "applied to the total amount appropriated." *Id.* at 12. If so, why then does the legislation contain the total amount appropriated?

Casting a rather desperately far net, the Governor next cites the Legislative Reference Bureau's Bill Drafting Manual for the unremarkable proposition that specific line items control over the totals "if the totals are incorrect." *Id.* at 15. Not surprisingly, the appropriation at issue here specifically contemplates that the totals may not be entirely accurate because they must forecast spending obligations into an unknown future. For example, the General Assembly, in making this appropriation, cannot accurately predict how many vacancies in office may occur in the upcoming fiscal year that may impact the total amount spent. 25 ILCS 115/1. That unpredictability is precisely why the legislation specifically appropriates "the following named sums, *or so much thereof as may be necessary*..." to pay the legislators' salaries. P.A 98-64, p. 74 (emphasis added).

Next, the Governor, like the Comptroller, points to the "custom and practice" to defend the line-item veto. (Def. Quinn Mem., p. 15.) The Governor contends Plaintiffs' arguments are

"meritless" simply because he did what was "routinely done." *Id.* This second bureaucratic shrug, of course, cannot change the words (or the meaning of those words) in Public Act 98-64. In addition, the only case the Governor cites for this dubious proposition does not support him. In *People ex rel State Board of Agriculture v. Brady*, 277 Ill. 124, 127, 115 N.E.2d 204, 205 (1917), the Governor vetoed $60,875 from a total appropriation of $62,375. The Supreme Court ruled that the vetoed items could not be paid, not because, as the Governor implies, there was a conflict with the total amount of the appropriation, but rather because the Governor's veto eliminated the necessary "object and purpose" for the vetoed appropriations and the department lacked authority to spend the funds at its own discretion. *Id* at 131, 115 N.E.2d at 206-07 ("The general appropriation of the total sum specifies no purpose or object"...and was thus not "in compliance with the Constitution."). Here, in contrast, Public Act 98-64 contains both a purpose (to "pay") and an object ("the Officers and Members of the General Assembly"), and more than sufficient detail pursuant to the General Assembly Compensation Act, and therefore does not have the defects of the appropriation considered in *Brady*. The Governor could have eliminated the object and purpose language from the legislation while it was before him, but for whatever reason, he did not do so.

The Governor directs this Court's attention to superfluous things – his veto message, the Legislative Reference Bureau's Drafting Manual, and other vetoed bills that were never challenged – to distract attention away from the words of the challenged statute. Indeed, the Governor makes not a single reference to the words in Public Act 98-64 anywhere in his pleadings.

The Governor argues that Plaintiffs elevate "form over substance" (Def. Quinn Mem., p. 12), when in fact, the opposite is true. Boiled down to its simplest terms, Public Act 98-64

currently says:

> The following named sums...are appropriated to the State Comptroller...to pay...., at the various rates prescribed by law...Officers and Members of the General Assembly.....$11,713,900
> For additional amounts, as prescribed by law, for party leaders in both chambers.....$2,138,800.

P.A. 98-64, pp. 74-76. This is the substance of the law today.

In their initial memorandum, Plaintiffs noted that if the appropriations bill sent to the Governor had contained only the unvetoed language, no one would seriously argue that the bill sent to the Governor, if signed, would be insufficient to pay the salaries now being withheld. That contention has not been challenged. Indeed, the Comptroller concedes that such lump sum appropriations are recognized as a sufficient basis to authorize the payment of the appropriated amounts. It is baseless to contend that the same language would constitute a valid lump sum appropriation if contained in the original bill, but not if contained in the bill returned to the General Assembly following a line-item veto that left the same language in place.

Plaintiffs simply ask that the words in the statute be given their plain and ordinary meaning, as dictated by the most fundamental rules of statutory construction. *See Ultsch v. Illinois Mun. Ret. Fund*, 226 Ill. 2d 169, 181, 847 N.E.2d 1, 8 (2007). When the plain language of legislation is clear and unambiguous, resort to other tools of statutory construction is not necessary. *Land v. Bd. of Educ. of City of Chicago*, 202 Ill. 2d 414, 421-22, 781 N.E.2d 249, 254 (2002).

Defendants, on the other hand, ask this Court not only to ignore these straight forward words, but to give them their opposite meaning: When the law says "the following named sums are appropriated", there really is no appropriation at all. When the laws directs the Comptroller to "pay" the "Officers and Members of the General Assembly" they really must go unpaid. In

Defendants' eyes, the amount $11,713,900 in the statute does not really mean eleven million, seven hundred thirteen thousand and nine hundred dollars, it means zero. Likewise, Defendant's position is that $2,138,800 should be read as "0". The statute says what it says. The rules of statutory construction apply to this statute the same way they do to every other statute. As a result, this Court should enter summary judgment for Plaintiffs on Count I.

C. Plaintiffs are Entitled to Summary Judgment on Count II Because The Plain Meaning of the Constitution Prohibits Mid-Term "Changes" To Legislators' Salaries.

As with Count I, Governor Quinn cannot prevail on Count II unless this Court chooses to redefine the meaning of a critical word in the Constitution. In this instance, the word is "changes" in Article IV, Section 11 of the Constitution. That Section provides in pertinent part :

> [a] member shall receive a salary and allowances as provided by law, but *changes* in the salary of a member shall not take effect during the term for which he has been elected."

Ill. Const. 1970, art. IV, § 11 (emphasis added.). The noun "change" is defined as "[a]n alteration; a modification or addition; substitution of one thing for another." Black's Law Dictionary 231 (6th ed. 1990). A dictionary may be used to assign a term its ordinary and commonly understood meaning. *Ahmad v. Bd. of Educ. of City of Chicago*, 365 Ill. App. 3d 155, 165, 847 N.E.2d 810, 819 (1st Dist. 2006). Plaintiffs ask this Court to ascribe this simple and ordinary meaning to the word "changes." Defendant Quinn, on the other hand, asks this Court to rule that the word "changes" does not really mean an alteration or modification, but is limited to a change in only one direction – an increase. (Def. Quinn Mem., p. 22) ("that provision only limits *increases* in legislator's salary.").[3]

The Governor starts off his discussion by emphasizing his power under Article IV,

[3] Defendant Topinka, through the Attorney General, is silent on this question, choosing not to defend the constitutionality of the Governor's line-item veto.

Section 9(d) of the Constitution, to veto "reduce or veto any item of appropriations." (Def. Quinn Mem., p. 21) ("'Any' means just that."). If he is correct, then *Jorgensen* was wrongly decided. The mere fact that a Governor may reduce "any" item of appropriation did not immunize that action from compliance with the judicial-salary provision in *Jorgensen*. Likewise, his ability to veto "any" item of appropriation cannot immunize him from compliance with the legislative-salary provision. Without any textual support, the Governor asks this Court to believe that this sentence in Section 9(d) subjects him to judicial review for line-item reductions, *see Jorgensen*, but gives him a free pass under the Constitution for line-item vetoes. Nonsense. It is simply impossible to reconcile the Governor's interpretation with *Jorgensen*. Indeed, the Governor later concedes that his veto power is not absolute, and that "the courts can decide the validity of the challenged veto." (Def. Quinn Mem., p. 22, fn. 1).

Thus, the constitutional validity of Defendant Quinn's line-item veto is dependent on this Court agreeing that the prohibition on "changes" in legislators' salaries does not really prohibit "changes", it only prohibits "increases". This twisted logic defies common sense, every rule of construction and is completely unsupported.

The meaning of a constitutional provision depends on the common understanding of the voters who gave it life by ratification. *Comm. for Educ. Rights v. Edgar*, 174 Ill. 2d 1, 13, 672 N.E.2d 1178, 1184 (1996); *Kalodimos v. Village of Morton Grove*, 103 Ill. 2d 483, 492, 470 N.E.2d 266, 270 (1984). This understanding is best determined by referring to the common meaning of the words used. *Comm. for Educ. Rights*, 174 Ill. 2d at 13, 672 N.E.2d at 1184. If the language is unambiguous, it will be given effect without further construction. *Id.*; *Maddux v. Blagojevich*, 233 Ill. 2d 508, 523, 911 N.E.2d 979, 988 (2009). In ascertaining the plain and ordinary meaning of a constitutional provision, "the constitution must be read and understood

according to the most natural and obvious meaning of the language in order to avoid eliminating or extending its operation." *Maddux*, 233 Ill. 2d at 523, 911 N.E.2d at 988. By ascribing Article IV, Section 11 its most natural and obvious meaning, the word "changes" prohibits any mid-term alteration or modification–whether increase or decrease—in a legislator's salary. In this case, the meaning of the word "changes" is clear and unambiguous.

The Supreme Court has recognized the clear and unambiguous nature of this provision by concluding that "what the constitution requires, both within the legislative article and elsewhere, is that the salary for various constitutional offices...be carved in stone when the public officials take office and that the salary structure so set not be *changed* to take effect during that term." *Rock v. Burris*, 139 Ill.2d 494, 499-500, 564 N.E.2d 1240, 1244 (1990)(emphasis added). Although *Rock* involved the invalidation of a mid-term increase in legislative pay, the Supreme Court did not adopt the restrictive interpretation urged here by Governor Quinn. Instead, the Court concluded that "[i]t is not permissible....for the legislature to *alter* the pay structure to become effective immediately." *Id.* at 500, 564 N.E.2d at 1244 (emphasis added). Thus, the Supreme Court has ruled that Article IV, Section 11 prohibition against "changes" in legislative salaries means that the legislature cannot "alter" the salary structure in mid-term. Nothing in *Rock* suggests that these terms prohibit only mid-term increases. Undeterred by these simple terms, in his reply Governor Quinn will no doubt argue that when the Supreme Court used the word "alter" in *Rock*, it did not really mean "alter", it really meant "increase." However, the Court need not make a further inquiry into the meaning of "changes" when the plain language clearly indicates that the word "changes" means any alteration or modification.

Even if the Court extends its analysis beyond the plain meaning of the word "changes", the conclusion remains the same. The conclusion that the word "changes" is meant to have its

common meaning of alteration or modification is further bolstered by a review of the various salary provisions contained in the Constitution. Like the legislative article, the executive article of the Constitution prohibits mid-term "changes" in salaries. Ill.Const. 1970, art. V, §21 ("Changes in the salaries of these officers elected or appointed for stated terms shall not take effect during the stated terms."). Similarly, the local government article prohibits any mid-term "increase or decrease" in salary. Ill.Const. 1970, art. VII, §9(b) ("An increase or decrease in the salary of an elected officer of any unit of local government shall not take effect during the term for which that officer is elected.").

The judicial article, on the other hand, prohibits only mid-term reductions in salary. Ill.Const. 1970, art. VI, §14 ("Judges shall receive salaries provided by law which shall not be diminished to take effect during their terms of office"). A similar rule applies to the State's Auditor General whose salary may not be reduced, but may be increased, during his term. Ill.Const. 1970, art. VIII, §3(a) ("His compensation shall be established by law and shall not be diminished, but may be increased, to effect during his term.").

Justice Miller summed up these various provisions in his concurring opinion in *Ingemunson v. Hedges*, 133 Ill.2d 364, 549 N.E.2d 1269 (1990)(holding that constitutional prohibition on mid-term salary increases for executive officers did not apply to States Attorneys). Justice Miller noted that:

> It is apparent from a reading of the relevant provisions that the framers of the current constitution chose to employ different measures with respect to the compensation of various groups of public officials. Changes in the salaries of officeholders subject to the compensation provisions of the legislative, executive, and local government articles of the Constitution may not take effect during an officeholder's current term of office. Salaries of judges and of the auditor general may be increased, but not decreased, during an incumbent's term. Finally, the provisions governing the compensation of clerks of court, of other nonjudicial officers, and of State's Attorneys are silent on the matter of changes in their salaries.

Id. at 373, 549 N.E.2d at 1273 (Miller, J., specially concurring). Had the constitutional framers intended to limit Article IV, Section 11 to increases, they certainly knew how to do so.

This interpretation is especially evident in light of the nearly identical language that the drafters chose to use in updating the executive salary provision of constitution. Under the 1870 Constitution, an executive officer's salary could not be "increased or diminished" during the officer's term. Ill. Const. 1870, art. V, § 23. The original proposal for executive salary provision of the 1970 Constitution continued the use of the terms "increased or diminished." 6 Record of Proceedings, Sixth Illinois Constitutional Convention 377-78; 3 Record of Proceedings, Sixth Illinois Constitutional Convention 1309. The Convention's Style, Drafting and Submission Committee subsequently replaced the words "increased or diminished" with the current prohibition against mid-term "changes" in executive compensation. 7 Record of Proceedings, Sixth Illinois Constitutional Convention 2542; Ill. Const. 1970, art. V, §21. The Supreme Court has explained that the Style, Drafting and Submission Committee "was not a substantive committee" and "did not have the function or responsibility of proposing substantive matters for inclusion in the Constitution." *Coalition for Political Honesty v. State Bd. of Elec.*, 65 Ill.2d 453, 471, 359N.E. 2d 138, 147 (1977). This point is further brought home by the Convention's official explanation to voters, which state that the difference in language represented "no substantial change" from the 1870 Constitution.[4] 7 Record of Proceedings, Sixth Illinois Constitutional Convention 2714. Thus, the drafters obviously used "changes" to encompass both increases and decreases in salary.

[4] Voters understanding of the constitutional provisions may be ascertained through any official explanation from the constitutional convention disseminated to the voters. *See Kalodimos*, 103 Ill. 2d at 492-98, 470 N.E.2d at 270-73; *Client Follow-Up v. Hynes*, 75 Ill. 2d 208, 223-26, 390 N.E.2d 847, 853-55 (1979).

The Article IV, Section 11 prohibition on "changes" to legislative salaries contains essentially identical language as the Article V, Section 21 prohibition against "changes" in executive salaries. As a result, the two provisions should be read to have the same meaning. *See Cinkus v. Village of Stickney Mun. Officers Electoral Bd.*, 373 Ill. App. 3d 866, 869, 869 N.E.2d 861, 865 (1st Dist. 2007) *aff'd*, 228 Ill. 2d 200, 886 N.E.2d 1011 (2008) ("When the legislature uses identical language to prescribe identical provisions, absent evidence of a contrary intent, the only logical conclusion to be drawn is that the legislature intended that the two provisions have the same meaning and be interpreted identically.").[5]

This understanding is unsurprising because it reflects what the Supreme Court concluded more than a century ago about the meaning of the word "change." In 1904, the Supreme Court held that the 1870 Constitution's judicial salary provision barring salaries from being "increased or diminished" had the same meaning as the legislative salary provision, which prohibited a mid-term "change" to legislative salaries. *Foreman v. People ex rel. McEwen*, 209 Ill. 567, 573, 71 N.E. 35, 37 (1904). The Court explained that the two provisions (as well as the salary provisions applying to executive branch, county and municipal officials) established a "well-defined rule" "that the salary attached to any public office having a fixed term shall not be increased or diminished during that term." *Id.* at 572, 71 N.E at 37; *see also Peabody v. Russel*, 301 Ill. 439, 441, 134 N.E. 148, 149(1922)(the legislative salary provision "prohibits such increase or decrease in the salaries of members of the General Assembly" during their terms of office); *Wolf v. Hope*, 210 Ill. 50, 59, 70 N.E. 1082, 1085 (1904) ("By the provisions of... section 21 of article 4... it is provided that the salaries or compensation of...members of the General Assembly ...shall not be increased or diminished during the terms of such officers").

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[5] *Nevitt v. Langfelder*, 157 Ill. 2d 116, 134, 623 N.E.2d 281, 289 (1993)("The same rules of construction applicable to statutes apply as well to the constitution...").

As a result, the Illinois court have already given the term "changes" as used in legislative salary provision a settled legal meaning of prohibiting mid-term salary increases and decreases that has unmistakably carried over into the 1970 Constitution. See *Winokur v. Bakalis*, 84 Ill.App.3d 922, 926, 405 N.E.2d 1329, 1333 (1st Dist. 1980) (giving the "same interpretation" to the legislative salary clause under the 1970 Constitution as its counterpart under the 1870 Constitution given the "striking similarity in the language employed in both provisions").

Governor Quinn's opening brief offers no compelling argument to the contrary. His brief completely ignores the plain meaning of the language in Article IV, Section 11 and the understanding of the voters who ratified the Constitution. Instead, his brief places great emphasis on convention debate discussion regarding Article IV, Section 11's prohibition against mid-term salary increases as somehow confining the prohibition against "changes" to only salary increases. (Def. Quinn Mem., p. 23.) While it is true that the convention debate focused on preventing the General Assembly from giving itself mid-term pay raises, at no point in those debates does any delegate state, or even suggest, that the salary provision permits mid-term salary decreases. And even if such a statement were made, it could not alter the plain language of the Constitution ratified by the voters. As the Illinois Supreme Court has observed:

> While statements and reports made by the delegates to the constitutional convention are certainly useful and important aids in *interpreting* ambiguous language of the constitution [citation], they are, of course, not a part of the constitution. It would be improper for this court to transform statements made during the constitutional convention into constitutional requirements where such statements are not reflected in the language of the constitution.

Comm. for Educ. Rights v. Edgar, 174 Ill. 2d 1, 20-21, 672 N.E.2d 1178, 1187 (1996), *quoting Village of Carpentersville v. Pollution Control Board,* 135 Ill.2d 463, 473, N.E.2d 362, 366 (1990) (emphasis in original.). Here, the language of the Constitution is clear.

This meaning is solidified by the official explanation of the Convention that accompanied the 1970 Constitution when submitted to the voters for ratification. In regards to Article IV, Section 11, the explanation simply stated: "This replaces Article IV, Section 21 of the 1870 Constitution. This Section is *self-explanatory*." 7 Record of Proceedings, Sixth Illinois Constitutional Convention 2703 (emphasis added). The Section can only be "self-explanatory" if the words are ascribed their most common, natural, and obvious meanings. Notably, the constitutional convention chose not to provide any further explanation beyond the plain language of the provision.

The Governor's brief highlights other bills the General Assembly has passed (Def. Quinn Mem., p. 25) imposing "furlough" days on legislators and public statements made by Plaintiffs as limiting the prohibition to salary increases. However, even assuming that the furlough legislation was constitutional – it has never been challenged – those bills do not change the plain meaning of the Constitution's prohibition against "changes" in legislative salaries. It is well established that that where the "language of the Constitution is not ambiguous, it is not permissible to interpret it differently from its plain meaning, and a construction [by a department of the government] contrary to its terms, for any period of time, will be disregarded." *People v. Bruner*, 343 Ill. 146, 162, 175 N.E. 400, 406 (1931), *quoting Neiberger v. McCullough*, 253 Ill. 312, 233, 97 N.E. 660, 664 (1912); *see also Peabody v. Russel*, 302 Ill. 111, 118, 134 N.E. 150, 153 (1922); *Fergus v. Brady*, 277 Ill. 272, 280, 115 N.E. 393, 396 (1917).

Regardless, while past practice of the legislature may aid in the interpretation of an ambiguous constitutional provision, which the legislative salary provision is not, the past practice must represent a uniform, contemporaneous, and continuous construction over a long period in order to be given any weight. *Graham v. Illinois State Toll Highway Authority*, 182 Ill. 2d 287,

312, 695 N.E.2d 360, 372 (1998); *Williams v. Kerner*, 30 Ill. 2d 11, 15, 195 N.E.2d 680, 682 (1963). Governor Quinn's example of the imposition of furlough days for four years can hardly be said to represent uniform, contemporaneous, and continuous construction over a long period of time, where the prohibition on salary changes has been in place for over 140 years and the furlough days were not implemented until almost 40 years after the enactment of the 1970 Constitution. *Cf. Graham*, 182 Ill. 2d at 312, 695 N.E.2d at 372 (the General Assembly's 27 year failure to subject the Toll Highway Authority's expenditure to appropriation, and the Toll Highway Authority's continued spending without appropriation, lead to the conclusion that the Authority was not subject to the appropriation process); *Williams*, 30 Ill. 2d at 15-16, 195 N.E.2d at 682 (the fact that all prior redistricting bills, under substantially the same constitutional language, were submitted to the governor for approval was persuasive in determining that the Constitution empowered the governor to veto redistricting bills). In addition, none of the bills have ever been challenged, and had they been, Plaintiffs would contend that the bills violate Article IV, Section 11 in the same way as Governor Quinn's line-item veto in this case.

The Governor's reliance on *Quinn v. Donnewald*, 107 Ill.2d 179, 483 N.E.2d 216 (1985), where he was an unsuccessful plaintiff, is misplaced. In *Donnewald*, the Supreme Court upheld the Compensation Review Act whereby an appointed Board was empowered to recommend salary adjustments for various state officials, including legislators, which would become effective unless specifically rejected by the General Assembly. *Id* at 184, 483 N.E.2d at 218-219. Most importantly for purposes of this case, the Board's recommendations for legislative salary adjustments, as opposed to most other state officers, would only take effect "for the new term." *Id.* at 184, 483 N.E.2d at 218. That point, alone, renders the case inapplicable to the Governor's position.

The *Donnewald* Court's reference to the Governor's item-reduction authority has nothing to add to this case. If the Compensation Review Board had recommended that legislative compensation be tripled in the new term, and the General Assembly had not rejected that recommendation, the Governor could certainly veto that appropriation prior to the commencement of the new-term. The reason why it would be permissible in that case, but why what Governor Quinn did here is not, is that the Constitution prohibits only *mid-term* changes to legislative compensation. Ill.Const. 1970, art. IV, § 11. As the Court in *Donnewald* noted, Compensation Review Board recommendations regarding legislators' salaries would only become effective "for the new term." *Id.* at 184, 483 N.E.2d at 218. Therefore, the constitutional prohibition against *mid-term* compensation changes would never apply to a recommendation under that statute. Thus, nothing in *Donnewald* remotely suggests that mid-term changes (either up or down) to legislators' salaries are constitutionally permissible.

Moreover, the prohibition against both increases and decreases makes perfect sense in the context of the political branches. As the New York Court of Appeals put it: "The prohibition against increases and decreases in legislators' compensation and emoluments during their terms of office would serve two salutary purposes—(1) to avoid a conflict of interest by removing from legislators the authority to vote themselves financial benefits at the expense of the public treasury, and (2) to forestall the possibility of manipulation of legislators' votes by promises of reward or threats of punishment effectuated through changes in salaries or allowances." *New York Pub. Interest Research Group v. Steingut*, 40 N.Y.2d 250, 258, 353 N.E.2d 558, 562 (1976).

In sum, the prohibition on mid-term salary alterations not only prevents a self-indulgent legislature from voting itself a mid-term raise, it prohibits the very type of legislative retribution

the Governor is attempting here. In turn, these restrictions ensure the independence of the three branches from one another and protects the separation of powers. *Jorgensen*, 211 Ill.2d at 300, 811 N.E.2d at 660. Although *Jorgensen* dealt with the Governor's attempts, through a veto, to reduce judicial salaries, the Governor cannot escape its essential holding: separation of powers prohibits the Governor from using his veto powers to violate another branches' constitutional salary provision.

No other bills passed by the General Assembly, Bill Drafting Manual, constitutional debate or newspaper interview can re-define the word "changes" as it appears in Article IV, Section 11. Plaintiffs are entitled to summary judgment on Count II.

III. Conclusion.

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully pray that their Motion for Summary Judgment be granted, that Defendant Quinn's Motion for Summary Judgment be denied, and that this Court grant the relief requested in the Complaint and Plaintiff's Motion for Summary Judgment.

Respectfully submitted,

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Appendix H

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

JOHN J. CULLERTON, individually and in his official capacity as President of the Illinois Senate, and MICHAEL J. MADIGAN, individually and in his official capacity as Speaker of the Illinois House of Representatives,

Plaintiffs,

v.

PAT QUINN, Governor of the State of Illinois, in his official capacity, and JUDY BAAR TOPINKA, Comptroller of the State of Illinois, in her official capacity,

Defendants.

Case No. 13 CH 17921

Hon. Neil H. Cohen

REPLY MEMORANDUM OF LAW BY GOVERNOR PAT QUINN
IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

The plaintiffs' response brief exposes the repeated disregard of undisputed facts and basic legal principles required to accept their claim, in Count I, that the Appropriations Bill contained the same appropriations before and after the Governor exercised "line item vetoes in appropriations totaling $13,852,700." Never mind, say the plaintiffs, that the Governor intended to veto all of the appropriated funds for the compensation of the members of the General Assembly. Never mind, they say, that the manner in which Governor Quinn exercised that veto is precisely the way that line-item vetoes have been exercised under the 1970 Constitution. Never mind that the Governor's vetoes are also consistent with the way the General Assembly deletes items from appropriation bills—that is, by eliminating individual appropriations without changing the totals—as well as the manner in which the Comptroller processes line-item appropriations and associated vetoes. Oh, and don't be concerned that there is not a single case interpreting the effect of a line-item veto in accordance with the plaintiffs' novel theory, either.

In truth, the Court should be mindful of each of the considerations that the plaintiffs are asking it to ignore. The Governor's intent should be effectuated, not disregarded. A line-item veto, after all, is part of a legislative process for which the fulfillment of legislative intent is the primary objective. The pattern and practice of the way in which Illinois Governors have issued line-item vetoes is powerful evidence of how those vetoes are supposed to be issued and interpreted. The same is true for the manner in which line-item appropriations and vetoes have been understood and implemented by Illinois Comptrollers. The plaintiffs' attempt to ignore all of these key considerations, and to adopt an unprecedented method of construing line-item vetoes, hardly bears further mention.

The constitutional challenge to the veto asserted in Count II fares no better. The plaintiffs' primary argument is that the plain meaning of article IV, section 11 of the Constitution

("Section 11") prohibits mid-term decreases, as well as increases, in legislators' salaries. The response brief never explains why, if the meaning of that provision is so obvious, before this controversy arose the plaintiffs themselves understood Section 11 to simply prohibit mid-term increases. That understanding has been expressed in the plaintiffs' sponsorship or other support over the years of at least seven bills reducing legislators' salaries, including one enacted barely a month before this lawsuit was filed. The limitation of Section 11 to mid-term increases of legislators' salaries is also supported by Supreme Court authority, statements by delegates at the 1970 Constitutional Convention and the views expressed by Senator Cullerton in the interview contained in Exhibit F.

The plaintiffs ask the Court to disregard all of this authority in favor of the supposed "plain meaning" of Section 11, but their new-found interpretation ignores the fact that Section 11 does not prohibit all "changes" in legislators' salaries. Rather, Section 11 requires that any such changes not take effect until the next legislative term. The reason for prohibiting mid-term increases in legislators' salaries is readily apparent. As was explained at the Constitutional Convention, it is intended to deter legislators from running wild with their own salaries. On the other hand, there is no corresponding reason for requiring that any decreases in legislators' salaries be delayed to the next term.

The plaintiffs' response brief is largely noteworthy for the extraordinary number of arguments from their opening brief that have been abandoned. Gone are arguments that the Governor's veto power should be narrowly construed, or that they have a stand-alone claim for violation of the separation of powers provision contained in article II, section 1. Also missing is any suggestion that the interpretation of the vetoes asserted in Count I is supported by the

Doctrine of Constitutional Avoidance. In reality, that doctrine does play a key role in this case, but not in the manner previously argued by the plaintiffs.

This lawsuit involves the plaintiffs' attempt to have the judicial branch intercede in a dispute between the legislative and executive branches before the legislative process has been completed—that is, before the General Assembly decides whether or not to override the challenged veto. Until the veto process has been completed this dispute is not ripe, and once that process has been completed this dispute may become moot. The appropriate way for the Court to avoid unnecessarily addressing a constitutional issue is to stay its hand while the plaintiffs avail themselves of their constitutionally prescribed remedy for a gubernatorial veto.

The fact that the plaintiffs have a means of non-judicial recourse aligns this case with those, cited in the Governor's opening brief, that were determined not to be ripe due to the failure of the legislative process to be completed. The underlying principle is one of judicial restraint: the concept that the judicial branch will not intercede in a struggle between the legislative and executive branches unless it is absolutely necessary to do so. The Argument presented below begins with this ripeness issue, and explains that the prerequisite for judicial intervention in a dispute between the other two branches generally arises from an impasse where the aggrieved party has no recourse other than from the courts.

ARGUMENT

I. PLAINTIFFS' CLAIM IS NOT RIPE, AND THE COURT SHOULD NOT DECIDE A CONTROVERSY BETWEEN THE EXECUTIVE AND LEGISLATIVE BRANCHES UNLESS AND UNTIL THEY REACH IMPASSE AFTER HAVING FULLY EXERCISED THEIR CONSTITUTIONAL AUTHORITY

A. This Case Is Not Ripe Because the Legislative Process Has Not Been Completed

In responding to the Governor's argument in his initial brief that this case is not ripe for adjudication, the plaintiffs contend that their alleged constitutional injury has fully matured, and that it is mere "speculation" whether anything yet to occur in the legislative process will ameliorate that alleged injury and obviate litigation. (Pl. Resp. at 4.) Thus, the plaintiffs attempt to distinguish the cases relied on by the Governor in his opening brief (*Fletcher v. City of Paris*, 377 Ill. 89, 35 N.E.2d 329 (1941); *Slack v. City of Salem,* 31 Ill. 2d 174, 201 N.E.2d 119 (1964); *Bd. of Educ. v. Gates*, 22 Ill. App. 3d 16, 316 N.E.2d 525 (2d Dist. 1974)) on grounds that, in each of them, parties sought the court's intervention midway through the legislative process, while here the process has effectively concluded. (*Id.* at 3-4.)

The plaintiffs' argument fails to acknowledge the significance of completing the legislative process provided under the Illinois Constitution. The Constitution provides that a vetoed item shall be returned to the house in which it is originated may be overridden by the General Assembly. ILL. CONST. 1970, art. IV, § 9. If the General Assembly chooses not to override the veto, the vetoed item does not become law. The General Assembly will, in effect, have assented to the veto. On the other hand, if the General Assembly chooses to breathe new life into the vetoed item through a legislative override, then it "shall become law." *Id.* The alleged injury for which the plaintiffs seek redress—the non-payment of their legislative

salaries—in all events still remains subject to further legislative process under the Constitution. It is not "speculative" whether this process is ongoing, it is what the Constitution requires.

If there were doubt as to the Constitution's intent on this point, it would be dispelled by the drafters' commentary. In discussing the reduction veto and the Constitution's finance article, Delegate Stanley Johnson explained the process envisioned by the drafters:

> [W]hen we drew together this finance article, we took from all of the different provisions within the present constitution having to do with the decision-making process as to how the state's financial resources would be allocated. These four sections are the entire heart of that decision-making and follow-up process.
>
> It begins with the governor's proposals in his Budget. It continues with the General Assembly's action. The governor's veto power is the final step in the decision-making process. *The legislative follow-up is what completes the circle of financial management.* This is why this is placed in this sequence—in each one *it would not be complete without any of these four steps, in our opinion.*

SIXTH ILLINOIS CONSTITUTIONAL CONVENTION, *Record of Proceedings* (May 5, 1970), p. 911 (emphasis added) (copy attached as Exhibit G).

Thus, contrary to the plaintiffs' attempt to distinguish *Fletcher*, *Slack* and *Gates*, the current posture of this case is closely analogous to the circumstances before the courts in those cases. In each of them, the plaintiffs filed suit *after* the legislature authorized a particular measure, but *before* the measure was submitted to the voters for referendum approval. Similarly, here the plaintiffs are seeking judicial review *after* the Governor vetoed the challenged appropriations, but *before* the vetoed appropriations have been returned to the General Assembly for follow-up. In the cited cases, as here, the plaintiffs were calling upon the court to insert itself in a political process before the process had been completed. As in those cases, this controversy will not become ripe unless and until the applicable legislative process has been completed.

B. *Jorgensen v. Blagojevich* Has No Bearing on the Ripeness Issue in This Case

The primary case cited by the plaintiffs on the ripeness issue, the Illinois Supreme Court's decision in *Jorgensen v. Blagojevich*, 211 Ill. 2d 286, 811 N.E.2d 652 (2004), does not provide an apt comparison for purposes of assessing the justiciability of this dispute. In *Jorgensen,* the Court held, *inter alia*, that Governor Blagojevich's reduction vetoes of appropriations for cost-of-living adjustments to judges' salaries violated the constitutional provision that prevents judges' salaries from being "diminished." But in insisting that their case is ripe for adjudication, the plaintiffs rely less on the *holding* in *Jorgensen*, and more on the timeline of the procedural events by which that case reached the Court. (Pl. Resp. at 4-5.) Thus, the plaintiffs make much of the fact that the Supreme Court issued certain orders only fifteen days after the first veto, and that the *Jorgensen* plaintiffs filed suit one day later. (*Id.*) Noting that these events occurred within the time provided under the Constitution for the General Assembly to override the veto, the plaintiffs argue, "[n]owhere in *Jorgensen* does the Supreme Court even hint at any doubts about the ripeness or justiciability of the plaintiffs' claims." (*Id.* at 4, 6.)

The short answer is that there was no occasion to address ripeness in *Jorgensen* because that case was decided long after the expiration of the period for overriding the vetoes. *See* 211 Ill. 2d at 291, 811 N.E.2d at 656. More fundamentally, *Jorgensen* was a case about the independence of the judiciary and its obligation to protect itself, with the very limited means available to it, against incursions by the other, more powerful branches of government. The plaintiff judges in *Jorgensen* had no other means to resist or reverse an incursion upon the judiciary by other branches. In contrast, this case presents no such threat by a more powerful branch against a weaker one. The General Assembly holds within its constitutional arsenal more

than sufficient means to repel—without judicial assistance—any incursion upon institutional prerogatives it perceives in the Governor's veto. Until the General Assembly has fully exercised the legislative means available to it, the plaintiffs' cries for judicial intervention should not be heard.

The Supreme Court repeatedly emphasized in *Jorgensen* the differences between the judiciary and the other branches and grounded its decision on the necessity born of those differences. Thus, the Court stated:

> While the three branches of government enjoy equal status under the constitution, their ability to withstand incursions from their coordinate branches differs significantly. The judicial branch is the most vulnerable. It has no treasury. It possesses no power to impose or collect taxes. It commands no militia. To sustain itself financially and to implement its decisions, it is dependent on the legislative and executive branches.
>
> * * *
>
> The vulnerability of the judicial branch is exacerbated because, unlike the executive and legislative branches the judiciary has no true electoral constituency. Although judges in Illinois are elected, they do not represent the voters in the same way executive officers or legislators do. . . . Lacking an electoral constituency, judges command no popular allegiance. That, in turn, renders them easy targets for those who would condemn unpopular rulings.

Jorgensen, 211 Ill. 2d at 300, 863 N.E.2d at 660-61.

The institutional vulnerability of the judiciary compelled the strong action taken by the Court in *Jorgensen*. Quoting the United States Supreme Court's decision in *O'Donoghue v. United States*, 289 U.S. 516 (1933), the Court emphasized that judicial protection of a judge's salary is "not for his private advantage—which, if that were all, he might willingly forego—but in the interest of preserving unimpaired a essential safeguard adopted as a continuing guaranty of an independent judicial administration for the benefit of the whole people." *Jorgensen,* 211 Ill. 2d at 303, 811 N.E.2d at 662 (quoting *O'Donoghue*, 289 U.S. at 533-34). "[T]he

Judiciary *must possess* the inherent power to determine and compel payment of those sums of money which are reasonable and necessary to carry out its mandated responsibilities, and its powers and duties to administer Justice, if it is to be in reality a co-equal, independent Branch of our Government." *Id.* at 313, 811 N.E.2d at 668 (*quoting Commonwealth ex rel. Carroll v. Tate*, 442 Pa. 45, 51-53, 274 A. 2d 193, 196-97 (1971)) (emphasis in original).

Notably, the plaintiffs nowhere mention *Jorgensen's* crucial distinction between the judicial branch and the coordinate branches, even though the Governor, in his initial brief, stressed that distinction. (Gov. Mem. at 26-28.) Instead, focusing on the outcome in *Jorgensen* while ignoring its context, they insist that *Jorgensen* permits the broad exercise of judicial authority to at once reinstate appropriations for legislator compensation. But nothing in *Jorgensen* suggests that the Supreme Court intended the decision to apply where no threat to the *judiciary* is presented, let alone where the dispute concerns legislators who, collectively, are empowered to reinstate the appropriations by overriding the Governor's veto, or to adopt new appropriations for the same purposes, and who have the ability to appeal to their respective constituencies for support in such endeavors.

Indeed, the Supreme Court clearly signaled that *Jorgensen* should not be applied broadly even where funding for the judicial branch is at issue. While firmly asserting that the Court's authority over the judicial branch "carries with it the corresponding authority to require production of . . . resources necessary to enable the judicial branch to perform its constitutional responsibilities . . . include[ing] payment of judicial salaries," the Court cautioned with equal firmness, "[t]here is no question that such authority must be invoked *sparingly*." *Jorgensen*, 211 Ill.2d at 312, 811 N.E.2d at 667 (emphasis added). The Court went on to say: "The courts will normally defer to the other governmental branches having initial responsibility for providing the

necessary funding. When those branches have failed to furnish resources essential to the court's operations, however, the judiciary may compel them to act through appropriate order." *Id.*

The "sparing" application of judicial authority—even for the courts to protect themselves—is evident in Supreme Court precedents cited in *Jorgensen.* In *Knuepfer v. Fawell*, 96 Ill. 2d 284, 449 N.E.2d 1312 (1983), the Court considered "the question as to the circumstances in which the judicial branch of government may properly order production of facilities for its use when the legislative or executive agency primarily responsible for doing so has failed to act." *Id.* at 287, 449 N.E.2d at 1313. The Court emphasized the "inherent power" of the judiciary to order that resources necessary to the administration of justice be provided to the courts, but also stressed that those powers must be exercised "sparingly." *Id.* at 295, 449 N.E.2d at 1316. The Court stayed an administrative order of the chief judge of the 18th judicial circuit that mandated additional facilities, holding that "the county board was addressing both temporary and long-term proposals to meet the need for additional facilities." Unless "there was no reasonable possibility of board action," the Court continued, "a proper regard for and deference to the prerogatives of the legislative and executive branches requires that judicial action be limited. . . ." *Id.*, 449 N.E.2d at 1317.

Similarly, in *People ex rel. Bier v. Scholz,* 77 Ill. 2d 12, 394 N.E.2d 1157 (1979), the Court issued a writ of mandamus directing a circuit judge to expunge those portions of an administrative order setting higher salaries for judicially appointed officers than had been set by the county board of supervisors. While recognizing the inherent power of courts to order reasonable and necessary expenditures for the conduct of judicial responsibilities (*id.* at 19-20, 394 N.E.2d at 1160), and commenting "at some length on this question of authority because of its importance in insuring the discharge of constitutional responsibilities imposed on the

judiciary" (*id.* at 22, 394 N.E.2d at 1161), the Court determined that the amounts set by the board of supervisors were not so unreasonable as to warrant exercise of judicial authority. *Id.* at 18-19, 22, 394 N.E.2d at 1159-60.

If notwithstanding the judiciary's keen interest in the funding necessary to maintain itself as an independent and functioning branch of government, it "defer[s] to the other governmental branches having initial responsibility for providing the necessary funding" unless and until those branches fail to act, *Jorgensen,* 211 Ill.2d at 312, 863 N.E.2d at 667 ,then *a fortiori* this Court must defer to those branches to resolve any dispute between them concerning *non-judicial* funding—at the very least until all legislative or political means of resolution available to those branches have been tried.

C. The "Sparing" Exercise of Judicial Authority in Inter-Branch Funding Disputes Required by *Jorgensen* Warrants Judicial Restraint Unless and Until the Political Branches Reach a Constitutional Impasse

The Supreme Court's admonition, in *Jorgensen,* that judicial authority in funding matters must be used "sparingly" and only after due deference has been given to the other branches, is consistent with the application of the ripeness doctrine by other courts in the context of disputes between the executive and legislative branches. For example, in his concurrence in *Goldwater v. Carter*, 444 U.S. 996, 996 (1979), Justice Powell stated:

> Prudential considerations persuade me that a dispute between Congress and the President is not ready for judicial review unless and until each branch has taken action asserting its constitutional authority. Differences between the President and the Congress are commonplace under our system. The differences should, and almost invariably do, turn on political rather than legal considerations. The Judicial Branch should not decide issues affecting the allocation of power between the President and Congress until the political branches reach a constitutional impasse.

The principle that controversies between the executive and legislative branches may not be ripe for judicial determination until "the political branches reach a constitutional impasse" was the basis for the decision in *Doe v. Bush*, 323 F.3d 133, 138 (1st Cir. 2003), where the court stated:

> Ripeness doctrine involves more than simply the timing of the case. It mixes various mutually reinforcing constitutional and prudential considerations. *See Mangual v. Rotger–Sabat*, 317 F.3d 45, 59 (1st Cir. 2003). One such consideration is the need "to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements." *Abbott Labs. v. Gardner*, 387 U.S. 136, 148, 87 S.Ct. 1507, 18 L.Ed.2d 681 (1967). Another is to avoid unnecessary constitutional decisions. *Reg'l Rail Reorganization Act Cases*, 419 U.S. 102, 138, 95 S.Ct. 335, 42 L.Ed.2d 320 (1974). A third is the recognition that, by waiting until a case is fully developed before deciding it, courts benefit from a focus sharpened by particular facts. *See Ohio Forestry Ass'n v. Sierra Club*, 523 U.S. 726, 736, 118 S.Ct. 1665, 140 L.Ed.2d 921 (1998).

A number of state courts have reached similar conclusions. *See, e.g., Sullivan v. McDonald*, 281 Conn. 122, 127, 913 A.2d 403, 406 (2007) ("When constitutional disputes arise concerning the respective powers of the coordinate branches of government, judicial intervention should be delayed until all possibility of settlement have been exhausted. . . . Judicial restraint is essential to maintain the delicate balance of powers among the branches established by the constitution."); *State v. Ragland*, Case No. 12-1758, 2013 WL 4309970, at *9 (Iowa Aug. 16, 2013) ("[W]e do not believe it is necessary to traipse into this constitutional thicket. If possible, we should avoid constitutional confrontation between two branches of government."); *McEachin v. Bolling*, 84 Va. Cir. 76 (2011) (holding that action by state senator seeking declaratory judgment that Lieutenant Governor was not entitled to vote to break tie on certain matters during the upcoming legislative session was not ripe because it "would be tantamount to issuing an impermissible advisory opinion.").

While not casting their analyses in terms of "ripeness," Illinois courts have recognized that disputes between and within the political branches of government must reach "impasse" before the judiciary adjudicates them. In *Rock v. Thompson*, 85 Ill. 2d 410, 426 N.E.2d 891 (1981), the Supreme Court issued a writ of mandamus directing Governor Thompson to convene the Senate for the purpose of electing the Senate President. *Rock v. Thompson* was decided by a plurality of the Court, over the vigorous dissent of three justices. Concurring in the decision only, and thus supplying the crucial fourth vote for the outcome, Justice Simon expressed doubt as to whether Illinois courts have authority to mandamus the Governor. *Id.* at 430, 426 N.E.2d at 902. He was satisfied, however, that "that question need not be decided in this case, because, after initially raising the issue, the Governor abandoned that defense." *Id.* Justice Simon then concluded that the case was immediately justiciable because:

> it was clear that the Senate was unable to resolve its impasse without help, and the judiciary was the only body it could turn to for help. Had we not acted, the work of the Senate would have gone undone or been open to challenge, and Senators, once having resorted to physical conflict in trying to resolve the controversy, might have continued to do so. Having been presented with this controversy, it was better for us to decide than to avoid decision.

Id. at 431-32, 426 N.E.2d at 903.

Similarly, in *Roti v. Washington*, 148 Ill. App. 3d 1006, 1014, 500 N.E.2d 463, 468 (1st Dist. 1986), the court considered the the validity of certain resolutions regarding the operation and organization of the Chicago City Council during the political and legal turmoil that surrounded the redistricting of the city's aldermanic wards after the 1980 census. The central issue in the case involved a challenge to the validity of a resolution that reorganized the City Council after the conclusion of the redistricting litigation produced an even 25-25 split among the aldermen. A former aldermanic faction of 29 filed a declaratory judgment action in the Circuit Court of Cook County alleging that the new organizational resolution was improperly

promulgated. The trial court held the resolution was validly adopted, and the Appellate Court affirmed. Deciding a case that, in the words of a sharp dissent by Justice Rizzi, would potentially "thrust the courts deeper into the thicket of partisan political affairs" (*Id.* at 1019, 500 N.E.2d at 473), the *Roti* majority cited Justice Simon's concurrence in *Rock v. Thompson* and stated:

> In the instant case, the 25 plaintiff aldermen claim that through their "No" votes, the council has resolved the issues in this case in their favor by failing to enact the resolution at issue and by overruling the mayor's contrary rulings; the 25 defendant aldermen and the mayor claim that by their "Aye" votes, the council resolved the same issues in the opposite manner. With that impasse the council has not and cannot resolve the issues presented to this court.

Id. at 1010-11, 500 N.E.2d at 466-67.

In the present case, the plaintiffs' claim is not ripe for judicial review because the General Assembly has not yet taken the legislative steps constitutionally available to it to deal with the Governor's veto. The legislature may vote to override the Governor's veto, or it may vote out an entirely new appropriation, and in either case such legislative action would moot this case. The plaintiffs have hinted that the legislature might not "even consider" to override (Pl. Resp. at 4), but such legislative inaction is fully within the contemplation of the Constitution's veto provisions, and would constitute legislative assent to the Governor's veto—which would also render this case moot. *See Board of Trs. of Cmty. Coll. Dist. No. 508 v. Burris*, 118 Ill. 2d 465, 478-79, 515 N.E.2d 1244, 1250-51 (1987) (Governor's line-item veto and legislature's decision not to override the veto established the "legislative intent" to reduce an appropriation).

Only if the legislature attempted but failed to override, and only then if the plaintiffs (or other legislators) sought to challenge the Governor's veto or the failure of the State of Illinois to pay them a salary, could it be fairly said that anything close to the political impasse defined in

Goldwater v. Carter and *Doe v. Bush*, and described in *Roti v. Washington* and the *Rock v. Thompson* concurrence, has been reached. Unless and until such an impasse occurs, this case is not ripe, and this Court should not enter the political fray.

II. THE CLEAR INTENT OF THE GENERAL ASSEMBLY WAS TO ADOPT LINE-ITEM APPROPRIATIONS FOR LEGISLATORS' COMPENSATION, AND THE PLAIN INTENT OF THE GOVERNOR WAS TO VETO THOSE APPROPRIATIONS

In their opening brief, the plaintiffs urged the Court to avoid deciding the constitutional issues presented in Count II by, instead, deciding Count I in their favor by construing the Appropriations Bill without the vetoed line items and deeming the remaining words and numbers in the Bill as constituting a lump-sum appropriation. The plaintiffs now seem to have abandoned their "constitutional avoidance" argument in light of the Governor's refutation of it (*see* Gov. Mem. at 19-20), and instead argue only that the words and numbers in the Appropriations Bill, as vetoed, are "sufficient" to get them what they want.

The plaintiffs do not dispute any of the following facts bearing on the claim asserted in Count I:

- The General Assembly intended its appropriations for legislators' compensation to be in line-item form.
- The Governor eliminated those line items from the Appropriations Bill with his veto, and that his intention in doing so was to veto the General Assembly's appropriations for legislators' compensation.
- The Governor's intention was clearly expressed in substantially the same manner as other Illinois Governors that have exercised line-item vetoes. (*See* Affidavit of Benjamin E. Winick and accompanying exhibits submitted with the Governor's motion for summary judgment.)

- The General Assembly, when amending line-item appropriations bills, does so in a similar manner pursuant to the *Bill Drafting Manual* published by the Legislative Reference Bureau (LRB). (Although the plaintiffs deride the LRB's *Manual,* the LRB is run by a committee comprised of the four legislative leaders, including the plaintiffs. *See* 25 ILCS 130/1-2; 25 ILCS 130/1-3.)
- The Illinois Comptroller processes line-item appropriations on the basis of the line items in the final legislation, after any line-item or reduction vetoes, and not on the basis of any totals contained in the bill.

The "cardinal rule" of statutory construction is that courts must give effect to the purpose and intent of legislative enactments. *Metro. Life Ins. Co. v. Hamer*, 2013 IL 114234, ¶ 18, 990 N.E.2d 1144, 1150 (2013); *Smith v. Logan County*, 284 Ill. 163, 165, 119 N.E. 932, 933 (1918). Ignoring this basic principle, the plaintiffs argue in their response brief that intent does not matter. They urge this Court to construe the Appropriations Bill without regard for intent—indeed, to construe the Bill to give effect to the *opposite* of what was intended.

The plaintiffs had previously acknowledged that the Governor's veto is a legislative act. (Pl. Mem. at 11.) They also had acknowledged that an appropriations bill, "like any other state law, must be interpreted . . . to give effect to the intent of the legislature." (*Id.* at 5.) The Illinois Supreme Court has held that the Governor's line-item veto and the legislature's decision not to override the veto established the "legislative intent" to reduce an appropriation. *Board of Trs. of Cmty. Coll. Dist. No. 508 v. Burris*, 118 Ill. 2d 465, 478-79, 515 N.E.2d 1244, 1250-51 (1987).

The plaintiffs' current contention—that the Court should give meaning to words and numbers remaining in the Appropriations Bill after the Bill's operative provisions have been excised by veto—flies in the teeth of the canons of statutory construction and confounds both

common practice and common sense. When the plaintiffs argued, albeit erroneously, that their approach was necessitated by the doctrine of constitutional avoidance, they at least were articulating some kind of principled rationale for their theory of construction. Now their only "principle" appears to be this: that if the Court *can* read the remaining scraps of the Appropriations Bill so as to give the plaintiffs what they want, it *must* read the Bill as doing so. That self-serving "rule" finds no place in the canons, and the Court should reject it.

III. THE GOVERNOR'S VETO WAS CONSTITUTIONAL

A. The Response Brief Abandons and Ignores Key Issues

In many respects, the discussion in the plaintiffs' response brief of the constitutionality of the Governor's veto is more noteworthy for what it fails to say than for what it asserts. Gone, for instance, is the claim that the Governor's veto constitutes a violation of the separation of powers provision contained in article II, section 1 of the Constitution. That provision is mentioned nowhere in the brief.

Also dropped is any reliance on *People ex rel. Millner v. Russel*, 311 Ill. 96, 142 N.E. 537 (1924). The plaintiffs have no answer to the explanation, in the Governor's brief, that *Millner* supports the constitutionality of Governor Quinn's veto by indicating that the plain language of the veto authority now contained in article IV, section 9(d) does not except appropriations like those involved in this case from "any item of appropriations" that the Governor is empowered to veto. (Gov. Mem. at 25-26.)

What the response brief does, instead, is pin the plaintiffs' entire constitutional argument on the statement in Section 11 that "changes in the salary of a member [of the General Assembly] shall not take effect during the term for which he has been elected." In addressing the application of the line-item veto power to that provision, the arguments dropped from the

plaintiffs' opening brief again speak volumes. For starters, the plaintiffs have abandoned their prior claim that the veto power must be narrowly construed. Their response brief makes no attempt to rebut the Governor's explanation that the plaintiffs misconstrued the only case they cited for that proposition. (Gov. Mem. at 21.)

Even more significantly, the response brief fails to acknowledge that, before this controversy arose, the plaintiffs had understood and openly declared—both in public discourse and through legislation—that Section 11 merely limited mid-term increases in legislators' pay. That understanding is why, on at least seven separate occasions, President Cullerton and Speaker Madigan had sponsored or otherwise supported legislation that reduced legislators' salaries by imposing unpaid furlough days, suspending their cost-of-living allowances (COLAs), or both. (Gov. Mem. at 5.) One of those occasions spawned the litigation in *Jorgensen v. Blagojevich* a decade ago, because on that occasion the legislators also suspended the COLAs for judges. As Senator Cullerton later recounted, the General Assembly recognized its mistake and repealed the portion of that legislation blocking COLAs for judges because it improperly "diminished" judges' compensation in violation of the Constitution. On the other hand, they saw no need to repeal the provision blocking legislators' COLAs because the Constitution merely prohibits mid-term raises in legislators' salaries. According to Senator Cullerton:

> [W]e passed a bill on the last day of session that suspended or abolished our COLAs for the year, for the General Assembly and the judges. And I voted for it.
>
> The head of the Judges Association contacted me shortly thereafter and said, you know, you can't do that to judges because there is a provision in the Constitution, as it should be, that says judges' compensation shall not be diminished. The legislature has a separate provision in the Constitution that says our salaries cannot be changed. I'm sure the framers of the Constitution meant by that that it can't be raised while you're in your term. . . . [T]hen I passed a law to repeal that provision as it related to the judges.

(Ex. F to Koppang Aff., 18:49-20:03.) In their opening brief, the plaintiffs themselves indicated that the provision suspending COLAs for judges was repealed, but not the corresponding provision for legislators, because the General Assembly determined it was unconstitutional to reduce the pay of judges, but not legislators. Pl. Mem. at 13 ("The General Assembly later determined that the statute, *at least as applicable to judges*, was unconstitutional.") (emphasis added)).

Speaker Madigan and President Cullerton are both lawyers with many years of experience in state government and in dealing with the Illinois Constitution—a charter that they have taken an oath to uphold. ILL. CONST. 1970, art. XIII, § 3. President Cullerton, in particular, has a sophisticated and nuanced understanding of the Constitution, including the very provisions involved in this lawsuit. (*See* Ex. F to Koppang Aff.) Although the plaintiffs' lawyers may wish to disavow their clients' prior rejection of the interpretation of Section 11 upon which Count II of the complaint is based, they cannot plausibly do so.[1]

[1] Noting that none of the five furlough bills have ever been challenged, the response brief asserts that "had they been [challenged], Plaintiffs would contend that the bills violate Article IV, Section 11 in the same way as Governor Quinn's line-item veto in this case." (Pl. Resp. at 22.) Regardless whether the plaintiffs "would contend" that the furlough bills were unconstitutional if they were challenged today, it is difficult to accept that the very legislators who sponsored some of those bills would have contended that they were unconstitutional if they had been challenged before this controversy arose. Indeed, on June 24, 2013, about a month before this lawsuit was filed, the General Assembly passed the most recent bill reducing legislators' salaries by imposing a furlough and suspending the COLA for legislators. Senator Cullerton was the Chief Senate Sponsor of that bill. *See* P.A. 98-30; http://www.ilga.gov/legislation/BillStatus.asp?GAID=12&GA=98&DocNum=1441&DocTypeID=HB&SessionID=85&LegID=72183&SpecSess=&Session= (last accessed on September 13, 2013).

B. The Response Brief Misinterprets the Plain Meaning of Section 11 and Improperly Refuses to Consider the Understanding of the Delegates to the Constitutional Convention or the Legislature

1. The plain meaning of "changes in the salary of a member shall not take effect during the term for which he has been elected"

The plaintiffs' own recognition that Section 11 means that legislators' salaries "can't be raised while you're in your term" belies the primary constitutional argument asserted in the response brief, namely, that the "natural and obvious meaning" of the word "changes" in that provision includes increases and decreases in salaries. (Pl. Resp. at 16.) The fundamental flaw in the plaintiffs' argument is that it fails to read "changes" in context. Section 11, after all, does not prohibit any changes to legislators' salaries. Rather, it states that "changes in the salary of a member shall not take effect *during the term for which he has been elected.*" Ill. Const. 1970, art. IV, § 9 (emphasis added).

It is not at all "natural and obvious"—in fact, it is illogical to suggest—that the Constitution delays when decreases in legislators' salaries may take effect. As explained by delegate Laurino when he introduced Section 11 at the 1970 Constitutional Convention ("Con-Con"), the purpose of delaying the effective date of a change in legislators' salaries was to curb any inclination they may have to "run wild" with their own salaries. (Ex. E, Sixth Illinois Constitutional Convention, *Record of Proceedings* (July 15, 1970), p. 2705 (emphasis added).) The ban on mid-term changes does this by requiring that any pay hike for members of the General Assembly be delayed until voters have an opportunity to decide whether to re-elect legislators who voted to increase their own pay. *Id.*

There is no corresponding need to curb any inclination by legislators to slash their own salaries. The response brief's failure to dispute this point is telling. Delaying the effective date of any such reductions would be pointless, if not counterproductive. This suggests that the only

mid-term "changes" prohibited by Section 11 are mid-term increases in legislators' compensation.

That conclusion is reinforced by the discussion of Section 11 at Con-Con. In addition to the previously referenced remarks by delegate Laurino about preventing legislators from running wild with their own salaries, the same interpretation was provided by delegate (and future Senator, Comptroller, and law professor) Dawn Clark Netsch when she proposed an amendment to Section 11 containing the substance of the provision that was ultimately included in the Constitution. The version of Section 11 introduced by delegate Laurino had prohibited mid-term changes in both salary and allowance. The amendment offered by delegate Netsch allowed mid-term changes in allowance, but retained the prohibition against mid-term changes in salary. Her explanation of the amendment left no doubt that "changes in salary . . . during the term for which [a legislator] has been elected" only refers to salary increases:

> The thing that concerned me the other day was that now that we are adding to the constitution a specific provision for allowances to be paid to members of the General Assembly, that we might be writing in unthought of, unheard of, and untoward restrictions on the nature of those allowances and their flexibility by saying that none of the allowances *could be increased* during the term for which a member has been elected.
>
> I would personally—as a matter of personal preference, I would simply eliminate entirely that *limitation on increases in salary or allowances*.... [But] I am aware of the fact that there are some delegates—perhaps a large number—who either believe or believe the public believes that it is an important protection, that is, they want the legislators to be put in a position where they cannot vote themselves a *salary increase* that would be effective immediately but could take effect only at the conclusion of their term. For that reason, I left in that restriction.

(Ex. G, Sixth Illinois Constitutional Convention, *Record of Proceedings* (July 18, 1970), p. 2889 (emphases added).) *See also id.* at 2889-91 (repeated references by delegates, in debating this provision, to "salary increase," "pay increase," and synonymous terms without any mention of a decrease).

2. The Court should reject the plaintiffs' attempt to have it ignore evidence regarding the meaning of Section 11 evinced by the delegates at Con-Con

The response brief does not dispute that all of the discussions about Section 11 at Con-Con addressed increases in legislators' salaries. Instead, the plaintiffs fall back on their discredited argument that the plain meaning of "changes" includes increases and decreases, adding that this plain meaning cannot be altered by anything said at Con-Con. (Pl. Resp. at 20.) As we have seen, however, the plain meaning of the actual constitutional provision—"changes in the salary of a member shall not take effect during the term for which he has been elected"—does not necessarily or even logically include decreases.

Far from supporting the plaintiffs' attempt to preclude consideration of the discussion of Section 11 at Con-Con, the case they rely on for that argument recognizes that "statements and reports made by the delegates to the constitutional convention are certainly useful and important aids in interpreting ambiguous language of the constitution. . . ." *Comm. for Educ. Rights v. Edgar,* 174 Ill.2d 1, 20-21, 672 N.E.2d 1178, 1187 (1996) (quotation and emphasis omitted). The *Edgar* Court referenced delegates' statements to help it interpret the constitutional provision regarding public education, explaining that, "if after consulting the language of a provision, doubt remains as to its meaning, it is appropriate to consult the debates of the delegates to the constitutional convention to ascertain the meaning they attached to the provision." *Id.* at 13, 672 N.E.2d at 1184. Similarly, in this case it is appropriate to consult the Con-Con debates to resolve any doubt regarding whether the mid-term changes prohibited by Section 11 include decreases in salary.

Despite arguing that evidence of the framers' interpretation of Section 11 is improper because of the supposed plain meaning of that provision, the response brief proceeds to claim that its interpretation is supported by the official explanation that accompanied the 1970

Constitution when it was submitted to the voters for ratification. (Pl. Resp. at 21.) The problem is that the official explanation of Section 11 was remarkably unilluminating. After noting the corresponding provision in the 1870 Constitution, the explanation stated that "[t]his Section is self-explanatory." (Ex. G, Sixth Illinois Constitutional Convention, 7 *Record of Proceedings* 2704.)

The response brief's assumption that this explanation supports the plaintiffs' interpretation of Section 11 is unjustified. It is not "self-explanatory" that the provision prohibiting mid-term changes in legislative salaries applies to decreases in salary. Indeed, it is more likely that one would think it self-explanatory that Section 11 was merely intended to constrain legislators from raising their own salaries. That was the explicit understanding of delegate Laurino when he introduced Section 11 on the floor of the convention. After observing that "[i]t's almost really self-explanatory," he proceeded to explain that the key language—"no change in either salary or allowance shall become effective during the terms for which a member has been elected"—ensures a legislator "cannot benefit from a pay raise until he is selected for another term, or reelected for another term." (Ex. E, Sixth Illinois Constitutional Convention, *Record of Proceedings* (July 15, 1970), p. 2705.) Thus, the "self-explanatory" reference in the official explanation of Section 11 should be understood to embody the same meaning of that provision evinced by the delegate who used that very phrase to describe Section 11 when he led the consideration of that provision at the convention.

3. The nature and importance of the General Assembly's understanding regarding the meaning of Section 11

Further indication that Section 11 only limits mid-term increases in legislators' salaries is provided by the understanding evinced by the members of the General Assembly in repeatedly cutting their own salaries. The plaintiffs acknowledge that the "past practice of the legislature

may aid in the interpretation of an ambiguous constitutional provision. . . ." (Pl. Resp. at 21.) However, claiming that the Governor only identified four years of furlough-based reductions in legislative salaries, the plaintiffs argue that those examples are insufficient to establish a past practice. (*Id.* at 21-22.)

The historical record is stronger and longer than the plaintiffs have acknowledged. There are at least seven instances in which the General Assembly has passed bills reducing legislators' salaries. Five bills have been passed reducing legislators' salaries by both imposing furlough days and suspending COLAs. *See* P.A. 96-800 (fiscal year ("FY") 2010); P.A. 96-958 (FY 2011); P.A. 97-71 (FY 2012); P.A. 97-718 (FY 2013); and P.A. 98-30 (FY 2014). Two additional bills suspended the COLA or imposed furlough days, respectively. *See* P.A. 92-607 (suspending COLA for FY 2003); P.A. 96-45 (second bill imposing furlough days for FY 2010). The seven examples identified here compare favorably with *Williams v. Kerner*, 30 Ill. 2d. 11, 13, 195 N.E.2d 680, 681 (1964), where the Court adopted a constitutional interpretation that was consistent with the historical practice established by "a number of reapportionments."

C. *Quinn v. Donnewald* Demonstrates That Section 11 Does Not Constrain the Governor's Veto Power Over Appropriations for Legislators' Pay

The Governor's opening brief explained that, in *Quinn v. Donnewald*, the Supreme Court explicitly recognized that the Governor's appropriations veto authority extends to the compensation of legislators. 107 Ill. 2d 179, 191, 483 N.E.2d 216, 222 (1985). The plaintiffs' response brief argues that *Quinn* is inapplicable because the legislative salary adjustments at issue in that case did not take effect until the next General Assembly took office. (Pl. Resp. at 22.) The plaintiffs' argument confuses the crucial distinction between salaries established pursuant to the Compensation Review Act, and the Governor's subsequent veto of appropriations funding those salaries. *Quinn* reveals that the Governor possesses veto power over

appropriations funding, for a given fiscal year, of legislators' salaries that were established by a previous General Assembly. That is precisely the situation involved in this case—and something that could not occur if plaintiffs' interpretation of Section 11 were correct.

The legislative pay hikes at issue in *Quinn* became law on January 9, 1985, the last day of the 83rd General Assembly, when the report of the Compensation Review Board containing salary recommendations was not disapproved by the General Assembly. *Id.* at 185, 483 N.E.2d at 219. *See* http://www.ilga.gov/senate/transcripts/strans83/ST010985.pdf, pp. 7-16 (Senate floor debate and vote on unsuccessful resolution to disapprove Compensation Review Board's report). The discussion in *Quinn* of a veto did not pertain to the establishment of the legislators' salaries, but rather to a subsequent appropriation funding them. In April 1985, the 84th General Assembly passed a bill appropriating funds to pay the salaries that had been established during the previous legislative term. *Quinn,* 107 Ill.2d at 185, 483 N.E.2d at 219. The Supreme Court agreed with the defendants that such appropriations of legislative salaries established pursuant to the Compensation Review Act were subject to the Governor's veto power over appropriations contained in article IV, section 9(d) of the Constitution. That provision authorizes the Governor to "reduce or veto any single item within an appropriations bill, subject, of course, to an override by the legislature." *Id.* at 191, 483 N.E.2d at 222. Thus, *Quinn* demonstrates that the Governor's veto power over appropriations in article IV, section 9(d) applies to appropriations, such as those involved in this litigation, regarding legislative salaries that were previously established by law. *Cf. Millner, supra,* 311 Ill. at 99-100, 142 N.E. at 538 (line-item veto power applies to appropriations for the salaries of state officers).

The plaintiffs' interpretation of Section 11 not only conflicts with *Quinn*, but would deprive the Governor of any veto power over appropriations for legislators' salaries, even those

that funded increases in pay. The parties agree that, pursuant to Section 11, legislation containing a pay hike for legislators must contain a delayed effective date. As in *Quinn*, when a later General Assembly passes an appropriations bill funding that pay hike, the full amount of the increased salary will already be law. Under the plaintiffs' interpretation of Section 11, the Governor would be deprived of any veto power under article IV, section 9(d) over those appropriations—not just line-item veto power, but also reduction veto power, including the power to eliminate or reduce the amount of the pay hike. This is because any such appropriations veto, according to the plaintiffs, would improperly "reduce" salaries that have already been established by law. The following discussion demonstrates that the cases cited by the plaintiffs do not support this manifestly dangerous interpretation of Section 11—an interpretation that would weaken that provision's ability to prevent legislators from running wild with their salaries.

D. None of the Cases Relied on by the Plaintiffs Involved a Decrease to the Salaries of the Members of the General Assembly

If there were any cases holding that Section 11 or its predecessor provision in the 1870 Constitution prohibits mid-term decreases in legislators' salaries, the plaintiffs undoubtedly would have cited them in their opening brief. It is not surprising, therefore, that none of the cases cited in the plaintiffs' response brief contains any such holding or even involves the validity of a reduction in legislators' salaries.

The response brief cites *Foreman v. People ex rel. McEwen,* 209 Ill. 567, 71 N.E. 35 (1904), for the proposition that, "[i]n 1904, the Supreme Court held that the 1870 Constitution's judicial salary provision barring salaries from being 'increased or diminished" had the same meaning as the legislative salary provision, which prohibited a mid-term 'change' to legislative salaries." (Pl. Resp. at 19.) In truth, the holding in *McEwen* had nothing to do with either

legislative salaries or decreases in any officials' salary. *McEwen* involved a judge who claimed he was entitled to a statutorily authorized increase in pay. *McEwen* held, as a matter of statutory interpretation, that the judge in question was not entitled to a pay increase. *Id.* at 569-70, 71 N.E. at 35-36. In dicta, the Court suggested that a contrary conclusion would violate the provision in the 1870 Constitution prohibiting mid-term increases or decreases in judges' compensation. *Id.* at 572, 71 N.E. at 36. The ensuing discussion went even further, ruminating about provisions in the 1870 Constitution regulating the salaries of the executive department, county officers, the legislature, and separate provisions regulating salaries for the Supreme Court, circuit judges, and Cook County judges. *Id.* at 572-73, 71 N.E. at 37. The Court's offhand suggestion that all of those provisions had a common meaning was so far afield from the actual issues in the case that there is no reason to believe that the issue had ever been briefed or argued.

Dicta sometimes takes on a life of its own by being repeated in subsequent cases that likewise fail to involve the subject of the dicta. That is what happened here, with a handful of older cases, none involving decreases in legislators' salaries, repeating the dicta from *McEwen*. *See Wolf v. Hope*, 210 Ill. 50, 70 N.E. 1082 (1904) (holding that judge was not entitled to increase in pay); *Peabody v. Russel*, 301 Ill. 439, 134 N.E. 148 (1922) (interpreting statute governing pay increases to certain state executive branch employees). The dicta from those cases are easily trumped by the subsequent decisions in *Millner* and *Quinn* affirming that the appropriations veto power extends to appropriations for legislators' pay, as well as the repeated statements by delegates at Con-Con indicating that Section 11 was only intended to prohibit mid-term increases of legislators' pay.

The plaintiffs' attempt to rely on *Rock v. Burris*, 139 Ill.2d 494, 564 N.E.2d 1240 (1990), is equally unavailing. The issue there was whether legislation providing additional payments to

legislators holding certain leadership positions involved an increase in salary. The Court held that it did, and that Section 11 therefore prevented those increases from becoming effective mid-term. *Id.* at 501, 564 N.E.2d at 1244.

Although *Rock* did not involve a decrease in legislators' compensation, it is worth noting that the Court expressly sanctioned the legislature's ability to reduce the salaries of individual legislators by removing them from leadership positions that entailed additional pay. *Id.* at 500, 564 N.E.2d at 1244. But beyond this indication that the Court did not envision an ironclad rule against reductions in legislators' compensation, *Rock* has no bearing on the validity of the gubernatorial veto challenged in this case. Unlike *Quinn*, where the Court expressly noted that an appropriations veto could be applied to legislative salaries, there is no reason to believe the *Rock* Court had an appropriations veto in mind when it referenced changing or altering not appropriations or even salaries, but rather a "salary structure." Nor did *Rock* discuss the framers' understanding of Section 11, since it was undisputed that Section 11 prohibits mid-term increases, and decreases were not an issue in the case. *See Holland v. City of Chicago*, 289 Ill. App. 3d 682, 691, 682 N.E.2d 323, 329 (1st Dist. 1997) ("In *Rock v. Burris*, our supreme court construed the term "salary" for purposes of Article IV, § 11 of the Illinois constitution *which prohibits members of the legislature from increasing their salary* during the term for which they have been elected") (emphasis added).

The only other authority discussing Section 11 that is cited by the plaintiffs is the concurring opinion in *Ingemunson v. Hedges*, 133 Ill.2d 364, 549 N.E.2d 1269 (1990). The issue in that case was whether a State's Attorney was entitled to a pay increase. The Court held that the petitioner was entitled to a raise because State's Attorneys are not among the executive branch officers subject to the regulation of executive salaries contained in article V, section 21 of

the Constitution. *Ingemunson* did not involve Section 11, legislators' compensation, or a gubernatorial veto. It is not clear from the dicta in Justice Miller's concurring opinion whether, in canvassing the various salary regulation provisions in the Constitution, he meant to suggest that Section 11 applied to decreases in legislators' salaries. It is clear, however, that that issue was not involved in the case and most likely had not even been briefed.

Jorgensen v. Blagojevich did involve a veto, but one that was directed at judicial salaries. 211 Ill. 2d 286, 811 N.E.2d 652 (2004). That makes all of the difference in the world, given the language in article VI, section 14 prohibiting judges' salaries from being "diminished," the importance of protecting the independence of the judiciary, and the weak and vulnerable position of the judicial branch in our constitutional system. (*See* Gov. Mem. at 26-28.)

The response brief does not attempt to address these considerations. After being prominently featured in the constitutional argument in the plaintiffs' opening brief, *Jorgensen* all but disappears from the discussion of Count II in the response brief. What remains is plaintiffs' characterization of the "essential holding" of *Jorgensen* as being that "separation of powers prohibits the Governor from using his veto powers to violate another branch's constitutional salary provision." (Pl. Resp. at 24.) This assertion begs the question by assuming that the veto challenged in this case violated Section 11. Just as important, it ignores what *Jorgensen* described as "[t]he unique constitutional limitations governing changes in judicial salaries." *Id.* at 309, 811 N.E.2d at 665. The uniqueness of those limitations—as embodied in a constitutional provision directed solely to decreases and not increases in judges' compensation, and entailing a "qualitatively different legal posture than salaries paid to other state officers and employees"—leads to a different result. *Id.*

E. The Plaintiffs' Interpretation of Section 11 Is Not Supported by Other Constitutional Provisions or the Purpose of Section 11

The plaintiffs attempt to bolster the interpretation of Section 11 that they have adopted for this litigation by relying on the constitutional provision prohibiting mid-term "changes" in the salaries of executive branch officers elected or appointed for a stated term. ILL. CONST. 1970, art. V, § 21. The corresponding provision in the 1870 Constitution had prohibited the salary of those officers from being "increased or diminished" during their terms. Ill. Const. 1870, art. V, § 23.

The plaintiffs contend that the "changes" in legislators' salaries regulated by Section 11 should be construed to have the same meaning as the changes in executive salaries regulated in article V, section 21, but they are unable to provide any evidence that the delegates so intended. To the contrary, as we have seen, the delegates intended Section 11 to regulate mid-term salary increases, not decreases. *See* Ex. E & G.

The uncontroverted evidence of the delegates' intent regarding Section 11 is fatal to the plaintiffs' argument that Section 11 and article V, section 21 should be construed to have the same meaning. The only case that the plaintiffs cite in support of their argument on this issue notes that the same term should *not* be construed to mean the same thing where there is "evidence of a contrary intent." *Cinkus v. Vill. of Stickney Mun. Officers Electoral Bd.,* 373 Ill. App. 3d 866, 869, 869 N.E.2d 861, 865 (1st Dist. 2007), *aff'd,* 228 Ill.2d 200 (2008). Moreover, in ascertaining that intent, the context in which the words are used is crucial. "[T]he context, in construing the meaning of words in any writing, 'may show that the same word used repeatedly in the same act (writing) is not used in the same sense." *People ex rel. Sellers v. Brady,* 262 Ill. 578, 586, 105 N.E. 1, 4 (1914) (citation omitted) (construing the word "bill" to have three different meanings in the 1870 Constitution).

Here, the context involves provisions regulating executive and legislative salaries. The executive salaries in article V, section 21, need to be protected against inappropriate decreases by the legislature. As the most powerful of the three branches, the legislature has the unique ability to pass legislation reducing salaries, or to decline to appropriate funds to pay authorized salaries. The only legislative weapon in the Governor's arsenal, the veto power, provides scant protection against such legislative action or inaction because the Governor can neither create nor increase an appropriation. By contrast, there is no corresponding need to protect the legislators' salaries in Section 11 against any reductions they may impose on themselves.

But what about protection against a gubernatorial veto? Although the plaintiffs argue that the language of Section 11 prohibits an appropriations veto like that involved in this case, they never suggest that the framers intended Section 11 to protect legislators against an inappropriate exercise of a gubernatorial veto. No such intent was expressed during the 1970 Constitutional Convention. Nor did the framers of the 1870 Constitution have such a veto in mind when they used language in article IV, section 21 that, as the plaintiffs correctly observed, was strikingly similar to that employed in article IV, section 11 of the 1970 Constitution. (Pl. Resp. at 20.) Indeed, the framers of the 1870 Constitution could not have intended article IV, section 21 to protect against an appropriations veto because neither a line-item veto nor a reduction veto was contained in the 1870 Constitution when it was adopted. The 1870 Constitution never contained a reduction veto, and a line-item veto was not added until 1884. *See* Janet Cornelius, *A History of Constitution Making in Illinois,* 67 n.1 (University of Illinois Press 1969) ("An 1884 amendment [to the 1870 Constitution] gave the governor the power to veto items in appropriation bills without negating the entire bills."). Thus, the only plausible purpose of the provision contained in Section 11—and the only one supported by historical

evidence and judicial precedent discussing appropriation vetoes of legislators' salaries—reveals, in Senator Cullerton's words, that "the framers of the Constitution meant [that legislators' salaries] can't be raised while you're in your term." (Ex. F to Koppang Aff., 19:27-34.)

In short, the plaintiffs never come to grips with the fact that the appropriations veto authority and the legislature's veto override authority, rather than the salary regulation provision contained in Section 11, define the allocation of power between the Governor and the legislature with respect to legislative salaries. Section 11 does not address reductions in legislative salaries because there is no need to protect against the legislature slashing its own salaries, and its veto override power gives it the ability to nullify any line-item or reduction veto of an appropriation for legislators salaries. Accordingly, if Count II is ever addressed on the merits, summary judgment should be entered in favor of the Governor.

CONCLUSION

With the pending motions now having been fully briefed, this is an opportune time to focus on what this lawsuit does and does not concern.

This lawsuit concerns the validity and effect of Governor Quinn's line-item veto. It does not concern, and will not conclusively determine, whether or how the members of the General Assembly will be paid during the current fiscal year.

If the time should ever come for the judicial branch to intercede in this tussle between the legislative and executive branches—in other words, if the completion of the legislative veto override process results in an impasse that ripens this controversy—the Court should determine that the Governor's veto achieved its intended effect of deleting appropriations for legislators' pay from the Act, and that the veto was valid because the Governor's constitutional authority to

veto "any item of appropriations" was not circumscribed by the limitation on mid-term increases in salary contained in Section 11.

But even a victory by the Governor on the merits of this lawsuit would not necessarily preclude members of the General Assembly from ever being paid. Whether through a timely override or a supplemental appropriations bill for this fiscal year, the plaintiffs and their legislative colleagues would have alternative avenues available to seek to be compensated—avenues independent of the veto challenged in this litigation.

Time will tell whether or not the plaintiffs or other members of the General Assembly will have occasion to pursue other recourse in pursuit of their desire to be paid. In the meantime, however, the plaintiffs' challenge to the validity of the veto should be dismissed on grounds of ripeness, and rejected on the merits if and when it presents a justiciable controversy.

Dated: September 13, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Steven F. Pflaum, an attorney, hereby certify that I caused a copy of the foregoing **Reply Memorandum of Law by Governor Pat Quinn in Support of His Motion for Summary Judgment** to be served upon:

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NGEDOCS: 2115828.2