

**FILED**

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CV-1

Clerk of the  
Circuit Court**CIRCUIT COURT OF SEVENTH JUDICIAL CIRCUIT  
SANGAMON COUNTY, ILLINOIS**

STATE UNIVERSITIES ANNUITANTS' ASSOCIATION, <i>et al.</i> ,  v.  STATE UNIVERSITIES RETIREMENT SYSTEM, <i>et al.</i> ,  Plaintiffs,  Defendants.	Champaign County No. 2014 MR 207  Consolidated With:
DORIS HEATON, <i>et al.</i> ,  v.  PAT QUINN, <i>et al.</i> ,  Plaintiffs,  Defendants.	Cook County No. 2013-CH-28406  Consolidated With:
ILLINOIS STATE EMPLOYEES ASSOCIATION and ROBERT SILGER, <i>et al.</i> ,  v.  BOARD OF TRUSTEES OF STATE EMPLOYEES RETIREMENT SYSTEM OF ILLINOIS <i>et al.</i> ,  Plaintiffs,  Defendants.	Sangamon County No. 2014-CH-3  Hon. John W. Belz
RETIRED STATE EMPLOYEES ASSOCIATION and LAWRENCE WORT, <i>et al.</i> ,  v.  PATRICK QUINN, <i>et al.</i> ,  Plaintiffs,  Defendants.	Sangamon County No. 2014-CH-1

GWENDOLYN A HARRISON <i>et al.</i> , Plaintiffs,  v.  PATRICK QUINN, <i>et al.</i> , Defendants	Sangamon County No. 2014-CH-1
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### **MOTION FOR INJUNCTIVE RELIEF**

Plaintiffs, State Universities Annuitants' Association (SUAA), *et al.*, hereby move the Court to enter a temporary restraining order and preliminary injunction prohibiting Defendants, State Universities Retirement System (SURS), *et al.*, from implementing PA 98-599 and in support thereof state as follows:

#### **I. INTRODUCTION**

The SUAA Plaintiffs<sup>1</sup> have filed this action, 2014 MR 207, challenging the constitutionality of PA 98-599. The SUAA Plaintiffs seek an order from this Court enjoining implementation of PA 98-599 until such time as the courts resolve the question of its constitutionality. In the alternative, these Plaintiffs seek an order from this Court enjoining implementation of any changes to Rule 2 of 40 ILCS 5/15-136 (the Money Purchase Calculation) and any change related to the Effective Rate of Interest until such time as the courts resolve the question of PA 98-599's constitutionality.

This is an unusual situation because the pension systems themselves have effectively called for injunctive relief as well. On April 23, 2014, SURS Executive Director William Mabe sent an open letter to Governor Quinn seeking similar relief:

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<sup>1</sup> In this Motion the movants will be referred to as the "SUAA Plaintiffs" or "these Plaintiffs" to distinguish them from the plaintiffs in the other four consolidated cases.

Additionally, the fact that some provisions of PA 98-599 take effect on June, 2014 while some provisions take effect on July 1, 2014 creates administrative issues for SURS and its stakeholders. Therefore, we urge for immediate passage of a technical corrections bill to set the effective date for Public Act 98-599 to July 1, 2014.

Finally, there is an issue associated with the method used to determine the effective rate of interest as prescribed under PA 98-599. The method provides no adequate lead time before it takes effect for a given fiscal year. The law provides that this rate for a given fiscal year be determined on the first day of the fiscal year. This gives SURS no prior notice as to the effective rate of interest for a following fiscal year. To eliminate this uncertainty, we urge for immediate passage of a technical corrections bill to set such rate on the November 1<sup>st</sup> of the preceding year.

Exhibit 1, William Mabe Letter to Governor Quinn, April 23, 2014.

By design, anyone who retires prior to July 1, 2014, will avoid the effects of PA 98-599. Currently, there are some 17,000 SURS members eligible to retire, many of whom would not consider doing so this year, but for the passage of PA 98-599. (Exhibit 10, Brookhart, ¶6.) However, without knowing whether the law will eventually be upheld as constitutional, or struck as unconstitutional SURS members (and others) are forced to make the decision whether to retire without full information.

More specifically, the changes in the Effective Rate of Interest (ERI) and the actuarial factors are designed to sour the Money Purchase Calculation pushing more SURS members back into the less remunerative general pension formula. This results in a diminishment of their pensions such that members must retire before July 1, 2014 in order to preserve those pensions. The diminishments are evident in two specific areas: 1) the pension annuities themselves; and 2) the refund of excess contributions.

With regard to the former, members of SURS are currently entitled to the greater of several pension annuity calculations, one of which is the Money Purchase Calculation. With the changes made by PA 98-599, many will be moved from the Money Purchase Calculation to the

general formula such that by working beyond June 30, 2014, they will continue to make contributions from their income to the pension system, without the benefit of an increase in their pension annuities, for an unknown period of time.

In what appears to be an effort to mitigate this effect, the legislature included language overriding PA 98-599 to provide a minimum guaranteed pension. But even the language of the “guarantee” will only ensure a pension at the level it would have been if the employee retired before July 1, 2013.<sup>2</sup>

Meanwhile, no effort was made at all to preserve any refunds of excess contributions, and many SURS members will forfeit a portion of their pension contributions (in the form of lost excess contribution refunds) if they fail to retire before July 1, 2014. Those who have not made excess contributions, if they do not retire, still face the prospect of contributing money to the pension system without any increase in their pension annuities.

Finally, beyond the ERI, the law itself is extremely complicated and SURS lacks the resources to fully explain its effects to SURS members. Thus, even those who do not stand to lose money by failing to retire this year are considering doing so because they erroneously think failure to retire now will result in a reduction of their benefits.

On the other hand, if the Act is eventually invalidated, anyone who does retire before July 1, 2014, will not be able to “unretire”. His uninformed decision will have been against his best interest and the harm will be irreparable. Temporary and preliminary injunctive relief is therefore essential.

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<sup>2</sup> Even if this is corrected, a guarantee of the calculation as of June 30, 2014 will not resolve any lost excess contributions or the loss of contributions going forward that do not result in any increase in pensions.

## II. FACTUAL UNDERPINNINGS

There are 17,000 SURS members who are currently eligible to retire before July 1, 2014 and face a difficult decision whether or not to do so. (Exhibit 10, Brookhart, ¶6.) PA 98-599 has changed the law in three significant ways relative to this motion:

- The change in the ERI used to calculate an annuitant's annuity under Rule 2 of Section 136 of the Pension Code (commonly referred to as the "Money Purchase Calculation");
- The change in the Actuarial Factors used to calculate an annuitant's annuity under the Money Purchase Calculation; and
- The "guarantee" intended to set a floor in a person's annuity at that which it would be if he retired this year does not do that<sup>3</sup>

(See Section II.A. *infra*). These changes to the law are causing people to retire early for three reasons:

- 1) A SURS member who works through fiscal year 2014-2015 (and for some time beyond) will be making contributions to the system, but will see no increase in his pension annuity.<sup>4</sup> (See Section II.B. *infra*);
- 2) A member's annuity is capped at 80% of his final rate of earnings. If his contributions exceed that amount, he is entitled to a lump sum refund of the difference. However, without changing the contributions, the new calculation can drop an annuity below 80% of a member's final rate of earnings resulting in a forfeiture of his lump sum refund; (See subsection II.C. *infra*); and
- 3) Because of general confusion, and in part because of the avalanche of requests for clarification, counseling, and specific information that SURS members that have sought from their system.<sup>5</sup> (See subsection II.C. *infra*.)

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<sup>3</sup> The minimum guaranteed pension annuity is based upon contributions through June 30, 2013. Thus, failure to retire before July 1, 2014 potentially results in forfeiting contributions and pension benefits earned from July 1, 2013 through June 30, 2014. This diminishment to annuity levels is a reduction in benefits in violation of the Illinois Pension Protection Clause. The law as written explicitly eliminates an entire year of contributions and benefits if the guarantee is the highest calculation should an annuitant not retire before July 1, 2014. For example, in the case of Declarant Don Castle, if he retires after PA 98-599 goes into effect his monthly annuity will be calculated under the "guarantee" and drop \$400 per month. (Exhibit 6, Castle, ¶10.)

<sup>4</sup> The guaranteed minimum is at least supposed to partially mitigate that by setting a pension floor at what one would get if he did retire this year, but because of an error, it sets the floor at last year's calculation. Irrespective of the drafting error, it still means that the next year the annuitant works and makes contributions will still not increase his pension annuity.

The problem is so dramatic that SURS Executive Director William Mabe sent a letter to Governor Quinn seeking an immediate modification to the Money Purchase “Guarantee” and a stay of the provisions relating to the ERI and Actuarial factors until at least November 1, 2014. See Exhibit 1.

**A. RULE 2 — THE MONEY PURCHASE CALCULATION**

SURS members are treated differently than other retirees under the Illinois Pension Code because Section 15-136(a)<sup>6</sup> provides a unique annuity calculation under Rule 2, also known as the Money Purchase Calculation:

Rule 2: The retirement annuity shall be the sum of the following, determined from amounts credited to the participant in accordance with the actuarial tables and the effective rate of interest in effect at the time the retirement annuity begins:

(i) the normal annuity which can be provided on an actuarially equivalent basis (using the effective rate of interest in effect at the time of retirement for retirements occurring on or after July 1, 2014), by the accumulated normal contributions as of the date the annuity begins;

(ii) an annuity from employer contributions of an amount equal to that which can be provided on an actuarially equivalent basis (using the effective rate of interest in effect at the time of retirement for retirements occurring on or after July 1, 2014) from the accumulated normal contributions made by the participant under Section 15-113.6 and Section 15-113.7 plus 1.4 times all other accumulated normal contributions made by the participant; and

(iii) the annuity that can be provided on an actuarially equivalent basis (using the effective rate of interest in effect at the time of retirement for retirements occurring on or after July 1, 2014) from the entire contribution made by the participant under Section 15-113.3.

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<sup>5</sup> Responding to such requests is an ordinary function of SURS, but is typically only made by people who are seriously considering retiring. Because of the confusion created by PA 98-599, thousands of SURS members who might otherwise not be considering retirement are seeking information from the system to determine whether they are affected, if so how, and whether they should be considering retirement.

<sup>6</sup> SURS members were entitled to the Money Purchase Calculation before PA 98-599. The language below reflects the Pension Code with the changes made by PA 98-599.

Notwithstanding any other provision of this Rule 2, a participant's retirement annuity calculated under this Rule 2 shall not be less than the retirement annuity that participant would have received under this Rule 2 had he or she retired during the fiscal year preceding the effective date of this amendatory Act of the 98th General Assembly.

With respect to a police officer or firefighter who retires on or after August 14, 1998, the accumulated normal contributions taken into account under clauses (i) and (ii) of this Rule 2 shall include the additional normal contributions made by the police officer or firefighter under Section 15-157(a).

The amount of a retirement annuity calculated under this Rule 2 shall be computed solely on the basis of the participant's accumulated normal contributions, as specified in this Rule and defined in Section 15-116. Neither an employee or employer contribution for early retirement under Section 15-136.2 nor any other employer contribution shall be used in the calculation of the amount of a retirement annuity under this Rule 2.

This amendatory Act of the 91st General Assembly is a clarification of existing law and applies to every participant and annuitant without regard to whether status as an employee terminates before the effective date of this amendatory Act.

This Rule 2 does not apply to a person who first becomes an employee under this Article on or after July 1, 2005.

40 ILCS 5/15-163(a) Rule 2. This calculation can be expressed as follows:

- Determine the "Normal Retirement"<sup>7</sup> portion of the employee's contributions.
- Add the interest on those Normal Retirement contributions (which is equal to the ERI).
- Multiply that total by 2.4 (the state is required to contribute \$1.40 for every \$1.00 contributed by an employee).
- The sum of those totals is divided by the appropriate Actuarial Factor.

(See Exhibit 2, p. 16, SURS Portable Plan Guidebook.) There are also additional considerations:

- The annual annuity cannot be greater than 80% of the employee's final rate of earnings (FRE). 40 ILCS 5/15-136(c)

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<sup>7</sup> "Normal Retirement" is 6.5% of earnings. 40 ILCS 5/15-157 (a). It is not all of the payments made by a retiree (which is currently 8%); The other 1.5% of payments is divided in the following manner: .5% to finance the annual increases (40 ILCS 5/15-157 (b)); 1% survivor's insurance contributions (40 ILCS 5/15-157 (c)). PA 98-599 reduces the employee's contributions to 7% and is divided in the following fashion: 6 % normal retirement benefits; 1% survivor's insurance contributions. Employees are no longer contributing to the Annual Annuity Increase (AAI).

- If the annual annuity is greater than 80% of the FRE the employee may be entitled to accumulated additional contributions. 40 ILCS 5/15-157(e)
- The Money Purchase Calculation is only available to employees that became employees before July 1, 2005. 40 ILCS 5/15-136(a) Rule 2.
- Under the Money Purchase Plan a retiree is entitled to the annuity calculation that results in the *highest* annuity.<sup>8</sup>

Of the 17,000 SURS members eligible to retire this year, 10,000 have a pension calculation based upon the Money Purchase Calculation. (Exhibit 10, Brookhart, ¶¶6, 7.) PA 98-599 causes two significant changes to the Money Purchase Calculation:

1. The ERI is now tied to the 30-year Treasury Bond + .75%; and
2. The Actuarial Factors will increase.

This results in a significant reduction in the annuity calculation. SURS has told its members that the change will result in a 20% to 30% reduction in their monthly annuity payments. (Exhibit 28, SURS Pension Reform, p. 9.)

**B. THOSE WHO DO NOT RETIRE WILL CONTINUE TO MAKE CONTRIBUTIONS, BUT WILL RECEIVE NO ADDITIONAL PENSION BENEFIT INCREASES**

Irrespective of whether one faces the loss of excess contributions, he will want to retire before July 1, 2014. If he fails to do so, he will not see his pension annuities increase with another year of service — perhaps more. Though he gets no credit and no additional benefit toward his pension annuity, he will be required to continue to make contributions to the system.

By way of example, consider Declarant Fred Pugh who is 65 years old and attended a SURS retirement seminar in the summer of 2013. He planned on retiring in September, 2015. (Exhibit 8, Pugh, ¶¶8, 17.) This plan enabled him to reduce his debt to a level that allowed him to retire on his estimated annuity. (*Id.*) However, because of PA 98-599, if he worked until

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<sup>8</sup> This is particularly important because the effect of PA 98-599 on many SURS members is to cause their annuity not to be calculated under the Money Purchase Calculation after July 1, 2014, rather under the general formula, which causes PA 98-599 to dramatically reduce the Money Purchase Calculation, notwithstanding the “guarantee” in Rule 2.



September of 2015, his annuity would be the same as if he retired before July 1, 2014. (*Id.*) As a result, while he will continue to make contributions his annuity will not increase.

Declarant Joyce Tyler is able to maximize her annuity by retiring before July 1, 2014 (by purchasing an additional year of service). (Exhibit 9, Tyler, ¶¶7, 9.) If she were to retire after June 30, 2014, to return her annuity to the level it would be if she retires before July 1, 2014, she would have to work at least four more years and maybe more. (*Id.*) Declarant Tyler planned on working at least another five years. However, due to the changes in the law, she is retiring now because while she would be making pension contributions her retirement annuity would not increase. (*Id.*, ¶9.)

**1. The “Guarantee” is not a Guarantee**

The drafters of the legislation recognized the significant diminishment in benefits for members under the Money Purchase Calculation and put in a “guarantee” that was apparently intended to ensure that a member’s annuity would never be less than what it would have been had the individual retired prior to PA 98-599 going into effect. However, the final language of the bill does not guarantee the annuity as of fiscal year 2014, but rather as of fiscal year 2013. The language of the guarantee is as follows:

Notwithstanding any other provision of this Rule 2, a participant's retirement annuity calculated under this Rule 2 shall not be less than the retirement annuity that participant would have received under this Rule 2 had he or she retired during the fiscal year preceding the effective date of this amendatory Act of the 98th General Assembly.

The flaw in the language is that the “effective date of this amendatory Act” is June 1, 2014, but SURS’s fiscal year begins on July 1, 2014. The result is that the “fiscal year preceding [June 1, 2014]” would be the fiscal year July 1, 2013 - June 30, 2013. This interpretation is consistent with the sweeping comments by SURS to the Governor and the Legislature. Exhibit 1. The

University of Illinois Board of Trustees' and University President Robert Easter came to the same conclusion.<sup>9</sup> (Exhibit 27, Dan Petrella, *U of I asks state legislators to prevent retirement rush; could affect 200 [employees] at UIS*, STATE JOURNAL-REGISTER, Apr. 18, 2014, <http://www.sj-r.com/article/20140418/NEWS/140419346>.)

The net effect of the guaranteed minimum is that it compels people to retire immediately in order to ensure that they receive their annuities as they were calculated under the law prior to PA 98-599 based upon having worked through June of 2014. However, that decision is being made without the constitutionality of the law being resolved. As a result, while a member might decide to retire, that decision could prove dramatically disadvantageous if the law is stricken as unconstitutional. In such a case, annuitants will have suffered any number of harms.<sup>10</sup>

### **C. THE EXCESS CONTRIBUTIONS REFUND**

Irrespective of the number of years or the amount of contributions made by a SURS member, his pension annuity is capped at 80% of his final rate of earnings (FRE). 40 ILCS 5/15-136(c). There is a possibility (and for many a reality) that their contributions to SURS exceed that cap. In such cases, the employee receives a lump sum refund of the excess at the time of retirement. 40 ILCS 5/15-157(e).

However, because the changes made to the Money Purchase calculation by PA 98-599 significantly drop the annuity, members whose annuity had exceeded 80% of their FRE are no longer receiving the maximum annuity. Therefore, such members despite having made

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<sup>9</sup> Even if the guarantee were drafted as intended, benefits would still be lost. The "guarantee" does not apply to excess contributions. For this reason, individuals like Declarants Kirk, Leinicke and Miller will still suffer a significant loss because PA 98-599 drops the annuity calculation. See Section C, *infra*.

<sup>10</sup> Irreparable harm will not be limited to the annuitants themselves. According to University of Illinois President Robert Easter, it would suffer the loss of many faculty members as a direct result of PA 98-599. *Id.* See Exhibit 27.

contributions that were in excess will no longer receive the lump sum refund of their excess contributions.

By way of example, Declarant John Summey, a 74 year old Professor of Marketing and a “Distinguished Teacher” has chosen to retire even though he had planned on working indefinitely. (Exhibit 7, Summey, ¶¶2, 6, 7.) Nonetheless, the prospect of losing \$70,000 in an excess contribution refund has left him with no choice but to retire.

Declarant Brian Kirk is entitled to receive his maximum annuity if he retires before July 1, 2014, and would also receive a \$190,000 lump sum payment as a refund of excess contributions. (Exhibit 3, Kirk, ¶¶10, 11.) However, after July 1, 2014, his annuity will decrease, and be calculated under the general formula. As a result, his pension will no longer be in excess of 80% of his FRE and therefore none of his \$190,000 excess contributions will be refunded. Declarant Kirk has no choice but to retire – a decision which may prove dramatically disadvantageous if PA 98-599 is found to be unconstitutional. (*Id.*, ¶¶11, 16-17.)

Declarant Linda Leinicke is entitled to receive her maximum annuity if she retires before July 1, 2014. (Exhibit 4, Leinicke, ¶¶10, 11). Because she has reached her maximum annuity she is entitled to a lump sum refund payment of \$9,100 for excess contributions. (*Id.*, ¶11.) If she choose to retire after July 1, 2014, (she received an estimate based upon a retirement date of August 1, 2015) her annuity would decrease and, for the same reasons as for Mr. Kirk, she would lose all of her excess contributions. (*Id.*)

Declarant Virginia Miller is entitled to receive her maximum annuity if she retires before July 1, 2014. (Exhibit 5, Miller, ¶12.) Under the law before PA 98-599, she would be entitled to a lump sum refund payment of \$14,900 in excess contributions. (*Id.*) Like Kirk and Leinicke, if she retires after July 1, 2014, she would lose all of her excess contributions. (*Id.*)

**D. Confusion And Misinformation**

The remaining 7,000 SURS members eligible to retire (that is those who are not affected by the Money Purchase Formula and therefore not affected by the change in the ERI or actuarial calculations) may still retire as a result of misinformation and confusion. The Pension Code itself is extraordinarily complicated. Worse, while in past years members have been able to review their pension situation with SURS, because of the passage of PA 98-599, SURS has been overwhelmed with requests for appointments to review members' pensions. It is estimated that less than one-third of the 17,000 members have been able to get appointments with SURS, and many of those are "group" appointments rather than individual counseling sessions. (Exhibit 10, Brookhart, ¶¶ 10-11.) Many members are being forced to make the decision whether to retire without the benefit of complete information. And indeed, some have already taken retirement without having the benefit of full information.

For example, Declarant Ugo Buy was unable to schedule a meeting with SURS until mid-June, 2014, a mere 2 weeks before he would have to retire to avoid PA-98-599. (Exhibit 12, Buy, ¶12.) This, in spite of submitting his request to meet with SURS in April of 2014.

Declarant Ronald Beldon has been unable to schedule a one-on-one session with SURS at all; when he last spoke with SURS he does not believe they would be available until the end of June. (Exhibit 11, Beldon, fn 1.) He was able to sign up for a group a session, but he does not believe this will be sufficient. (*Id.*)

Meanwhile, the SURS website pension calculator no longer provides the information it once did. Where in the past one could enter any date of retirement into the calculator to determine the effect of retiring at that time, the SURS pension calculator now only permits one to compare retirement prior to July 1, 2014, and on July 1, 2014. (Exhibit 12, Buy, ¶14; Exhibit 13, SURS Interim Benefit.) Moreover, numerous newspaper articles, blogs, and other web-based

media are publishing their own analyses which add to the confusion. (Exhibit 25, Julie Wurth, *Pension plan sparks uncertainty, frustration*, NEWS-GAZETTE, Dec. 3, 2013, <http://www.news-gazette.com/news/local/2013-12-03/pension-plan-sparks-uncertainty-frustration.html>, Exhibit 26, Jodi Cohen, *Flaw in pension law sparks university retirements*, CHICAGO TRIBUNE, Apr. 29, 2014, [http://articles.chicagotribune.com/2014-04-29/news/ct-university-retirements-met-20140429\\_1\\_pension-law-pension-changes-state-universities-retirement-system](http://articles.chicagotribune.com/2014-04-29/news/ct-university-retirements-met-20140429_1_pension-law-pension-changes-state-universities-retirement-system), Exhibit 29, Sandra Guy, *U. of I. fears brain drain without change to pension reform*, CHICAGO SUN-TIMES, Apr. 18, 2014, <http://www.suntimes.com/26919773-761/u-of-i-fears-brain-drain-without-change-to-pension-reform.html#.U2KMa2dOWpo>.)

### **III. LEGAL STANDARDS**

The standards for a temporary restraining order and preliminary injunction in Illinois are well settled.

To succeed on a motion for a preliminary injunction, the moving party must plead and prove each of the following elements: a clear right or interest in need of protection, irreparable harm if the injunction is not granted, the lack of an adequate remedy at law, and the likelihood of success on the merits. *Joseph J. Henderson & Son, Inc.*, 318 Ill.App.3d at 883, 252 Ill.Dec. 845, 743 N.E.2d at 716. In addition, the trial court must determine if the balance of hardships to the parties supports the grant of preliminary injunctive relief. *Joseph J. Henderson & Son, Inc.*, 318 Ill.App.3d at 883, 252 Ill.Dec. 845, 743 N.E.2d at 716. Because the purpose of a preliminary injunction is to preserve the status quo pending a decision on the merits, the plaintiff does not carry the same burden of proof that is required to prevail on the ultimate issue. *Williams Brothers Construction, Inc. v. Public Building Comm'n*, 243 Ill.App.3d 949, 955–56, 184 Ill.Dec. 14, 612 N.E.2d 890, 894 (1993)

*Keefe-Shea Joint Venture v. The City of Evanston*, 773 N.E.2d 1155, 1160 (1st Dist. 2002); *see also, Jacob v. C&M Video Inc.*, 618 N.E.2d 1267, 1274 (5<sup>th</sup> Dist. 1993) (citing *Houseknecht v. Zagel* (1983), 112 Ill.App.3d 284, 291–92, 67 Ill.Dec. 922, 927, 445 N.E.2d 402, 407.)

Moreover, “[t]he party seeking relief is not required to make out a case which would entitle him to relief on the merits; rather, he need only show that he raises a ‘fair question’ about the existence of his right and that the court should preserve the status quo until the case can be decided on the merits. *Id.*, (citing *Buzz Barton & Associates, Inc. v. Giannone* (1985), 108 Ill.2d 373, 382, 91 Ill.Dec. 636, 640, 483 N.E.2d 1271, 1275.)

#### **IV. PLAINTIFFS HAVE A PROTECTABLE INTEREST**

In this case, Plaintiff, Bruce Reznick, and some of the SUAA members who will be affected are, among others, tenured faculty at various state universities and community colleges. Plaintiffs clearly have a protectable interest in their employment. Moreover, although the merits of this case have not been resolved, Plaintiffs have an interest in their pensions which is protected by the Pension Clause of the Illinois Constitution (Article XIII, Sec. 5) and by virtue of contracts (independent of the Pension Clause) which they entered into with the State for those pensions. The question of a protectable interest is also intertwined with the merits arguments set forth below along with the other elements these Plaintiffs show.

#### **V. THESE PLAINTIFFS WILL SUFFER AN IRREPARABLE INJURY**

The injury at stake here is that SURS members are retiring without the ability to make an informed choice. Until the constitutionality of the law is settled, they are forced to make a decision whether to retire based on a guess as to what this Court (and superior courts) will do. For many, the mere chance that the law might be sustained compels them to retire before they would have otherwise chosen. But even for the remainder, the decision of how to invest the next years of their lives revolves around the determination of the constitutionality of this law — something which, without the relief requested, they will not be able to know before making that irrevocable decision. As a result, while a member might decide to retire because of PA 98-599,

that decision could prove disadvantageous in the event the law is invalidated. The losses to those who guess wrong about retiring before or after July 1, 2014, are myriad, including:

- the opportunity to maximize their retirement income;<sup>11</sup>
- an unknown number of years working earning an income;<sup>12</sup>
- an unknown increase in their Final Rate of Earnings;<sup>13</sup>
- an unknown amount of additional contributions they will make;<sup>14</sup>
- an unknown increase in their annuity;<sup>15</sup>
- an unknown amount in excess contributions that will be refunded;<sup>16</sup>
- an additional year of teaching (working with students and doing what they love);<sup>17</sup>
- the opportunity to complete unfinished work and projects;<sup>18</sup>
- the loss in professional status within the university community;<sup>19</sup> and
- loss of an unknown number of grants to the schools and employees that remain as a result of the retirements.<sup>20</sup>

These losses are significant and irreparable, and they would fall upon thousands of people. Injunctive relief is therefore necessary.

## **VI. THESE PLAINTIFFS LACK AN ADEQUATE LEGAL REMEDY**

Because once a member retires, he cannot “unretire”, there is no adequate legal remedy.

(Ex. 12, Buy, ¶18.) As already discussed, among the losses would include the ability to complete unfinished work. It will also result in the loss of an unknown number of years of teaching — an

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<sup>11</sup> Exhibit 15, Docking, ¶15(a); Exhibit 6, Castle, ¶18(a)

<sup>12</sup> Exhibit 15, Docking, ¶15(b); Exhibit 16, Hall, ¶17(a); Exhibit 4, Leinicke, ¶17(a); Exhibit 17, Jacobini, ¶15(a); Exhibit 18, Land, ¶17(a); Exhibit 12, Buy, ¶17(a); Exhibit 3, Kirk, ¶17(a); Exhibit 5, Miller, ¶18(a); Exhibit 19, Iorio, ¶17(a); Exhibit 21, Anderson, ¶17(a); Exhibit 22, Read-Dreyer, ¶16(a);

<sup>13</sup> Exhibit 15, Docking, ¶15(b); Exhibit 16, Hall, ¶17(a); Exhibit 4, Leinicke, ¶17(a); Exhibit 17, Jacobini, ¶15(a); Exhibit 18, Land, ¶17(a); Exhibit 12, Buy, ¶17(a); Exhibit 3, Kirk, ¶17(a); Exhibit 5, Miller, ¶18(a); Exhibit 19, Iorio, fn. 1, ¶17(b); Exhibit 21, Anderson, ¶17(a); Exhibit 22, Read-Dreyer, ¶16(a);

<sup>14</sup> Exhibit 15, Docking, ¶15(c); Exhibit 16, Hall, ¶17(b); Exhibit 4, Leinicke, ¶17(b); Exhibit 17, Jacobini, ¶15(b); Exhibit 18, Land, ¶17(b); Exhibit 12, Buy, ¶17(b); Exhibit 3, Kirk, ¶17(b); Exhibit 5, Miller, ¶18(b); Exhibit 19, Iorio, ¶17(b); Exhibit 21, Anderson, ¶17(b); Exhibit 22, Read-Dreyer, ¶16(b);

<sup>15</sup> Exhibit 15, Docking, ¶15(c); Exhibit 16, Hall, ¶17(b); Exhibit 4, Leinicke, ¶17(b); Exhibit 17, Jacobini, ¶15(b); Exhibit 18, Land, ¶17(b); Exhibit 12, Buy, ¶17(b); Exhibit 3, Kirk, ¶17(b); Exhibit 5, Miller, ¶18(b); Exhibit 19, Iorio, ¶17(b); Exhibit 21, Anderson, ¶17(b); Exhibit 22, Read-Dreyer, ¶16(b);

<sup>16</sup> Exhibit 16, Hall, ¶17(c); Exhibit 4, Leinicke, ¶17(c); Exhibit 17, Jacobini, ¶15(c); Exhibit 18, Land, ¶17(c); Exhibit 12, Buy, ¶17(c); Exhibit 3, Kirk, ¶17(c); Exhibit 5, Miller, fn. 1 at 3, ¶18(c); Exhibit 19, Iorio, ¶17(c); Exhibit 21, Anderson, ¶17(c); Exhibit 22, Read-Dreyer, ¶16(c);

<sup>17</sup> Exhibit 5, Miller, ¶9.

<sup>18</sup> Exhibit 6, Castle, ¶17, Exhibit 23 Reznick ¶18d.

<sup>19</sup> Exhibit 20, Appleby, ¶16(b)

<sup>20</sup> Exhibit 27.

interest which has immeasurable value in terms of enjoyment, satisfaction, the meeting of commitments, and benefits to society.

**VII. THE BALANCE OF HARDSHIPS FAVORS GRANTING THE INJUNCTIVE RELIEF**

This is an extraordinary situation in that not only does the balance of hardships favor these Plaintiffs in the granting of this motion for injunctive relief, but ironically, the State too, would benefit by the granting of the injunctive relief requested herein. As to these Plaintiffs, should the Court fail to grant the relief, thousands of SUAA members will be forced to make a major life decision — whether to retire before their time — without the benefit of knowing what the consequences of that decision will be on their pensions and their ability to support themselves in retirement.

However, should the Court fail to grant the requested relief, the State will be harmed as much or more so as these Plaintiffs. The systems themselves have asked the State to stay the implementation of the law. On April 8, 2014, the State Employees' Retirement System (SERS)<sup>21</sup> passed the following Board Resolution:

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<sup>21</sup> SERS is not a defendant in this case as these Plaintiffs and SUAA members are themselves members of SERS. However, as a defendant in one or more of the other consolidated cases, SERS clearly believes that it will benefit by the granting of the injunctive relief sought herein.]



## SERS Board Resolution

(April 8, 2014)

### **Be it resolved that the SERS Board of Trustees**

- (1) express our concerns about the serious implementation issues SERS faces as we struggle to prepare for the effective date of the new pension law and for the burden SERS will face if the law is implemented and then found unconstitutional,
- (2) request that the Attorney General seek or agree to a stay of the new law's implementation until the lawsuits that challenge the new law's constitutionality are finally completed, and
- (3) if the Attorney General will not comply with point (2), request that the Board of Trustees be allowed to select its own counsel to defend SERS and the Board in the lawsuits that name them as defendants so that SERS and the Board are able to express their position in the lawsuits and seek or agree to a stay of implementation of the new law until the lawsuits that challenge the new law's constitutionality are finally completed.

### *Passed Unanimously*

On April 23, 2014, SURS Director, William Mabe, sent a letter to the Governor asking for several "technical corrections". Among them, he asked that that portions of the law be stayed by at least one month. The letter also asked that the ERI be determined for each year by November 1<sup>st</sup> of the preceding year to give SURS adequate lead time. This is essentially a request for the same injunctive relief sought by these Plaintiffs insofar as it seeks to not have the ERI changes go into effect for fiscal year 2014.<sup>22</sup> These Plaintiffs also seek to prevent the changes to the ERI going into effect, but their view is that the injunction should hold until such time as the courts resolve the constitutional challenges to the Act. Nonetheless, the proposed

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<sup>22</sup> In order to have eight months lead time (i.e. a November 1 determination for a June 30 retirement deadline), SURS is necessarily requesting that the changes to the ERI not go into effect for fiscal year 2014 and that they be determined by November 1, 2014 for fiscal year 2015.

changes by Mr. Mabe will not resolve all of irreparable harms suffered by the Plaintiffs in this matter.

Technically the State Universities themselves are not parties to his suit, but they are entities of the State. They too have an interest in seeing the law stayed. (See Exhibit 27, quoting the University of Illinois Board of Trustees and President Robert Easter.) The current uncertainty is, at the least, causing them to face a mass exodus of faculty which the Board of Trustees of the University of Illinois has described as a “brain drain”. *Id.* For example, on April 18, 2014, the University of Illinois Board of Trustees held a special meeting and called for a “technical correction” to the law which stands to cause as many as 5,000 faculty at the University of Illinois’ Urbana Champaign Campus and another 200 faculty at the Springfield Campus to retire early. (Exhibit 27, Dan Petrella, *U of I asks state legislators to prevent retirement rush; could affect 200 at UIS*, STATE JOURNAL-REGISTER, Apr. 18, 2014, <http://www.sj-r.com/article/20140418/NEWS/140419346>.)<sup>23</sup> The same concerns have been raised at Northern Illinois University. (Exhibit 26, Jodi Cohen, *Flaw in pension law sparks university retirements*, CHICAGO TRIBUNE, Apr. 29, 2014, [http://articles.chicagotribune.com/2014-04-29/news/ct-university-retirements-met-20140429\\_1\\_pension-law-pension-changes-state-universities-retirement-system](http://articles.chicagotribune.com/2014-04-29/news/ct-university-retirements-met-20140429_1_pension-law-pension-changes-state-universities-retirement-system).) It also appears that PA 98-599 is indirectly causing universities to lose substantial private and public grants from forced retirements and many faculty members are being recruited away from Illinois. See generally, Exhibit 27.

In this instance, the balance of hardships for all parties favors granting the injunctive relief sought. But, in this case, it is not merely a balancing of hardships. Hardships will be

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<sup>23</sup> Even with the demanded technical corrections, the Universities still stand to lose faculty who need to retire to preserve their excess contributions refunds or to avoid working and contributing to the systems without receiving an increase in their pension annuities.

imposed on all parties, specifically including SURS, the principal Defendant in this lawsuit, if the requested injunction is not granted and hardships that would otherwise be imposed on all parties, including Defendant SURS, will be avoided if the requested injunction is granted.

#### **VIII. PLAINTIFFS HAVE A LIKELIHOOD OF SUCCESS ON THE MERITS**

Plaintiffs have alleged that PA 98-599 violates three different sections of the Illinois Constitution: the Pension Clause (Article XIII, §5), the Contracts Clause (Article I, §16), and the Takings Clause (Article I, §15). The declarations filed in support of this motion clearly show that Plaintiffs have provided voluntary consideration for their pensions making those pensions a contract independent of the Pension Clause. However, for purposes of this motion for injunctive relief, Plaintiffs argue only that they have a likelihood of success on the merits insofar as the relevant provisions violate the Pension Clause.<sup>24</sup> These Plaintiffs do not have to prove their case here or even go into the entirety of their legal arguments. As the Illinois Supreme Court noted in *Stocker Hinge Manufacturing v. Darnel Industries*, 447 N.E.2d 288, 291 (Illinois 1983):

A TRO should not be refused or dissolved merely because the court may not be absolutely certain the plaintiff has the right he claims. (*O'Brien v. Matual* (1957), 14 Ill.App.2d 173, 187, 144 N.E.2d 446.) The plaintiff is not required to make out a case which would entitle him to judgment at trial; rather, he only needs to show that he raises a "fair question" about the existence of his right and that the court should preserve the status quo until the cause can be decided on the merits. *Boner v. Drazek* (1973), 55 Ill.2d 279, 285-86, 302 N.E.2d 280; *O'Brien v. Matual* (1957), 14 Ill.App.2d 173, 187-88, 144 N.E.2d 446.

In this Motion these Plaintiffs have gone beyond raising a "fair question" about the existence of their rights, they have shown that they can prove their case in numerous ways and this "emergency memorandum" is only a preview of the arguments to come. Even a brief review of

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<sup>24</sup> Even as to the Pension Clause, this memorandum is not a motion for summary judgment. It is an incomplete argument put together in haste for the purposes of showing that Plaintiffs have presented a "fair question". *Jacob* at 1274 (citations omitted.)

the various complaints filed in the consolidated cases shows that there is a fair question (indeed a myriad of fair questions) as to the constitutionality of the Act.

**1. PA 98-599 Diminishes Pensions and The Pension Clause is Clear That Pensions Cannot be Diminished or Impaired**

The Pension Clause states in clear terms that, "Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired". (Ill. Const., 1970, Art. XIII, §5) It contains no exceptions.

Meanwhile, PA 98-599 clearly diminishes pensions. Indeed, that is the purpose behind the Act. By diminishing pensions, PA 98-599 saves the State money.

The change to the ERI diminishes pensions in the following ways:

- A. Many employees who continue to work beyond June 30, 2014, in addition to the deprivations they suffered after that date, will be required to make contributions to the system (even if at a reduced rate), but will see no increase in their pension benefits for having made those contributions. (E.g., an employee who would have received \$4,500 per month if he retired on June 30, 2013, will contribute to the system during 2014 and 2015, but will likely receive if not less, the same \$4,500 per month when he retires in 2015.)<sup>25</sup>
- B. It will cause many employees to lose money they have already put into the system because the recalculation of their annuity will cause it to fall below 80% of their final rate of earnings. This in turn will eliminate their refunds (even though they are still guaranteed that their pension annuities will be at least what they would have been had they retired at the end of fiscal year 2013, and even if that error were corrected to fiscal year 2014). (See Section II.C. Existing Contributions Refund *supra*.)
- C. Because of the drafting error in the guaranteed minimum, even employees who are eligible to retire as of June 30, 2014, are faced with no increase in their pension annuity for having worked in the 2013-2014 fiscal year and for having made contributions during that year.

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<sup>25</sup> At some point, the additional contributions and years of service will permit some members to earn more than the guaranteed minimum. But to get there, they may have to work several more years. (Exhibit 9, Tyler, ¶7).

**2. “Necessity” or “Exigent Circumstances” Are Not to Be Considered  
Where the Constitution Provides for No Exceptions**

There are circumstances where “necessity” or “exigent circumstances” may justify a departure from statutory law. But that justification must be found within the law itself. *Jorgenson v. Blagojevich*, 811 N.E.2d 652 (2004) (“Any departure from the law is impermissible unless justification for that departure is found within the law itself. Exigent circumstances are not enough. Neither the legislature nor any executive or judicial officer may disregard the provisions of the Constitution even in case of a great emergency.”) The Pension Clause contains no exceptions and presents no justification for a departure. The Court should thus not permit a violation of the Pension Clause on the basis of any exigent circumstances nor any alleged necessity. Indeed such assertions are irrelevant and the State should not be heard to present them.

**IX. CONCLUSION**

This motion is highly unusual in that the injunctive relief sought is in the interest of *all* parties. These Plaintiffs have clearly articulated an irreparable harm for which money damages would be inadequate. More specifically, they must make the irreversible decision to retire before July 1, 2014, or not retire before that date, without knowing whether the law which provides the determining factors in that decision, will be sustained as constitutional, or will be stricken by the courts. Thousands of people would not even be considering the possibility of immediate retirement were it not for the passage of PA 98-599 and would much prefer to simply trust that it will be found unconstitutional. Unfortunately, they cannot afford to take that chance and must retire before July 1, 2014 — a decision that cannot be undone.

The result is also seriously detrimental to the universities and community colleges because they will be losing valuable faculty and other employees. Meanwhile, the retirement

systems themselves are in no worse a position if the injunction is granted. PA 98-599 provides barely any savings for them in the next year — the savings will be realized several years hence — and what little savings that might be had would be swallowed by the fact that without this injunction, the number of members retiring and taking an annuity will dramatically increase. In fact, the total payout of pension expense in the immediate future will skyrocket with the increased number of retirees.

These Plaintiffs have also articulated a “fair question” on the merits and identified numerous protectable interests — not just their pension contributions and benefits, but their very jobs. This Court will have to resolve numerous questions under the law. Clearly the changes to the ERI and Money Purchase Calculation demonstrate a loss of contributions already made to the system by many and represent a diminishment of pension their benefits in violation of the Pension Clause. Moreover, SURS members who came into the system prior to 2005 are entitled to the benefit of the Money Purchase Calculation if their contributions make it more favorable for them than the general formula. Those working after June 30, 2014 will be denied that benefit, thereby effectively diminishing their pensions.

Meanwhile, SURS remains unable to advise its members on basic issues critical to their decision to retire, both because it cannot logistically handle the volume of requests and because of uncertainties in the law. This too cries for injunctive relief. Accordingly, these Plaintiffs ask the Court to stay implementation of the law until such time as a determination of its constitutionality may be determined.

WHEREFORE, Plaintiffs SUAA, *et al.*, respectfully request that this Honorable Court, ORDER:

1. That enforcement of Public Act 98-599 is STAYED and the State is ENJOINED from implementing it in any fashion until such time it has been determined to be unconstitutional; or in the alternative

2. That enforcement of Public Act 98-599 is STAYED and the State is ENJOINED from implementing it in any fashion until further Order from this Court;<sup>26</sup> or in the alternative

3. That enforcement of those portions of Public Act 98-599 which might affect the Money Purchase Calculation or refund of excess contributions is STAYED and the State is ENJOINED from implementing them in any fashion until such time as those provisions have been determined to be unconstitutional; or in the alternative

4. That enforcement of those portions of Public Act 98-599 which might affect the Money Purchase Calculation or refund of excess contributions is STAYED and the State is ENJOINED from implementing them in any fashion until further Order from this Court.

Respectfully Submitted,  
SUAA, *et al.*

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<sup>26</sup> Although Plaintiffs believe that an immediate and complete stay is necessary and appropriate, an immediate interim stay until such time as this Court can sort through the complexities of the would be appropriate.

**Certificate of Filing and Service**

The undersigned, an attorney, certifies that on May 2, 2014, he caused the foregoing Motion for Injunctive Relief to be filed with the Clerk of Sangamon County, and copies to be served by postage-prepaid first class mail to each of the following:

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