

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

IN RE: PENSION REFORM LITIGATION) No. 2014 MR 1
) Hon. John W. Belz

This document relates to:)

ILLINOIS STATE EMPLOYEES)
ASSOCIATION RETIREES, ROBERT SILGER,)
GWENN KLINGLER, BARBARA SCHOB,)
BARBARA MAXEINER, and JOHN)
MUNDSTOCK, on behalf of a Class of)
Persons Similarly Situated,)

Plaintiffs,)

-vs-)

THE BOARD OF TRUSTEES OF THE)
STATE EMPLOYEES' RETIREMENT SYSTEM)
OF ILLINOIS, THE BOARD OF TRUSTEES OF)
THE GENERAL ASSEMBLY RETIREMENT)
SYSTEM, THE BOARD OF TRUSTEES OF THE)
STATE TEACHERS' RETIREMENT SYSTEM,)
THE BOARD OF TRUSTEES OF THE STATE)
UNIVERSITY RETIREMENT SYSTEM,)
JUDY BAAR TOPINKA, Comptroller of the)
State of Illinois, and DAN RUTHERFORD, the)
Treasurer of the State of Illinois)

Defendants.)

Originally Filed as
Sangamon County Case
Case No. 2014 CH 3

ANSWER AND DEFENSES

Defendants The Board of Trustees of the State Employees' Retirement System of Illinois,
The Board of Trustees of the General Assembly Retirement System, The Board of Trustees of the
State Teachers' Retirement System, The Board of Trustees of the State University Retirement
System, Judy Baar Topinka, Comptroller of the State of Illinois, and Dan Rutherford, Treasurer of

the State of Illinois (collectively "Defendants"), for their answer to the Amended Complaint filed by Plaintiffs Illinois State Employees Association Retirees, *et al.*, state as follows:

ALLEGATIONS COMMON TO ALL COUNTS

1. Plaintiff Illinois State Employees Association Retirees ("ISEAR") is an Illinois corporation headquartered at 1548 West Jefferson Street, Springfield Illinois, 62702. All ISEAR members are annuitants of one of the five pension systems of the State of Illinois ("State"). ISEAR's mission is to promote the welfare of public employees who have retired from service with the State in all ways compatible with the public interest and to promote improvement in the public employee's retirement systems of Illinois.

ANSWER: Defendants lack knowledge sufficient to form a belief regarding the allegations in Paragraph 1 and therefore deny the allegations.

2. Plaintiff Robert Silger is an annuitant in the State Employee Retirement System ("SERS"). At all times during his term of service, Mr. Silger made all contributions required of him by existing terms of State law and SERS regulations to enable him to receive all levels of SERS benefits, including but not limited to the 3% annual automatic increases available to SERS annuitants.

ANSWER: Defendants admit that Mr. Silger is an annuitant in SERS. Defendants lack knowledge sufficient to form a belief regarding the remaining allegations in Paragraph 2 and therefore deny the allegations.

3. Plaintiff Gwenn Klingler is an annuitant in the General Assembly Retirement System ("GARS"). At all times during her term of service, Ms. Klingler made all contributions required of her by existing terms of state law and GARS regulations to enable her to receive all levels of GARS benefits, including but not limited to the 3% annual automatic increases available to GARS annuitants.

ANSWER: Defendants admit that Ms. Klingler is an annuitant in GARS. Defendants lack knowledge sufficient to form a belief regarding the remaining allegations in Paragraph 3 and therefore deny the allegations.

4. Plaintiff Barbara Schob is an annuitant in the Teachers' Retirement System ("TRS"). At all times during her term of service, Ms. Schob made all contributions required of her by existing terms of state law and TRS regulations to enable her to receive all levels of TRS benefits, including but not limited to the 3% annual automatic increases available to TRS

annuitants.

ANSWER: Defendants admit that Ms. Schob is an annuitant in TRS and that she made all required contributions during her term of service. Defendants deny the remaining allegations in Paragraph 4.

5. Plaintiff Barbara Maxeiner is an annuitant in the State University Retirement System ("SURS"). At all times during her term of service, Ms. Maxeiner made all contributions required of her by existing terms of state law and SURS regulations to enable her to receive all levels of SURS benefits, including but not limited to the 3% annual automatic increases available to SURS annuitants.

ANSWER: Defendants admit that Ms. Maxeiner is an annuitant in SURS and that Ms. Maxeiner made all required retirement contributions during her term of service. Defendants deny the remaining allegations in Paragraph 5.

6. Plaintiff John Mundstock is an annuitant in the SERS, having paid additional dollars to participate in one of the State's early retirement incentive programs in 2002. At all times during his term of service, Mr. Mundstock made all contributions required of him by existing terms of state law and SERS regulations to enable him to receive all levels of SERS benefits, including but not limited to the 3% annual automatic increases available to SERS annuitants.

ANSWER: Defendants admit that Mr. Mundstock is an annuitant in SERS. Defendants lack knowledge sufficient to form a belief regarding the remaining allegations in Paragraph 6 and therefore deny the allegations.

7. Contrary to the fiscally responsible actions of the individual plaintiffs and others members of the plaintiff class who made all required contributions to the appropriate retirement system (including additional ERI contributions for the members of that subclass), the State through the General Assembly and the Office of the Governor ("Governor") failed to budget and appropriate funding for these retirement systems. To be sure, Illinois' public pensions are not mere gratuities; the named Plaintiffs and their class contributed both years of service and a percentage of their paychecks to secure their pension benefits.

ANSWER: Defendants admit that named Plaintiffs and members of the purported class worked as state employees and during that time made contributions to the retirement systems of which they

were members. The remaining allegations in Paragraph 7 consist of legal conclusions that Defendants deny, and to the extent it contains any factual allegations, Defendants deny them.

8. The failure of the State, through the General Assembly and the Governor, to sufficiently fund these retirement systems resulted in the sale of assets in order to fund annuity payments to retirees as to some retirement systems.

ANSWER: Defendants admit that, in some years, the State did not make the Actuarially Required Contribution ("ARC") payments to the retirement systems as described by the system actuaries and that in some years some of the systems sold assets to make annuity payments. Defendants deny the remaining allegations of paragraph 8.

9. The failure of the State, through the General Assembly and the Governor to sufficiently fund these retirement systems resulted in unfunded liabilities for each of these retirement systems. These unfunded liabilities, the General Assembly now claims, gives rise to a "pension crisis" in the State, which allegedly excuses diminishing the pensions of Plaintiff class.

ANSWER: Defendants admit that the fact that the State did not make ARC payments to SERS, SURS, GARS, and TRS contributed in part to the unfunded liabilities for the retirement systems. Defendants deny that the fact that the State did not make the required ARC payments caused all of the unfunded liabilities or were the proximate cause of the State's fiscal crisis. Defendants deny the remaining allegations in Paragraph 9 and, further answering, incorporate by reference the allegations of their affirmative defense below.

10. Defendant the Board of Trustees of the General Assembly Retirement System ("GARS Board of Trustees") is the governing body of an independent agency of the State of Illinois, organized and existing pursuant to Article 2 of the Illinois Pension Code, 40 ILCS 5/2-101, *et seq.* The GARS Board of Trustees is sued in its official capacity only.

ANSWER: Defendants admit the allegations in Paragraph 10.

11. Defendant the Board of Trustees of State Employees' Retirement System ("SERS Board of Trustees") is the governing body of an independent agency of the State, organized and existing pursuant to Article 14 of the Illinois Pension Code, 40 ILCS 5/14-101, *et seq.* The SERS Board of Trustees is sued in its official capacity only.

ANSWER: Defendants admit the allegations in Paragraph 11.

12. Defendant the Board of Trustees of the State Teachers' Retirement System ("TRS Board of Trustees") is the governing body of an independent agency of the State, organized and existing pursuant to Article 16 of the Illinois Pension Code, 40 ILCS 5/16-101, *et seq.* The TRS Board of Trustees is sued in its official capacity only.

ANSWER: Defendants admit the allegations in Paragraph 12.

13. Defendant the Board of Trustees of the State Universities Retirement System ("SURS Board of Trustees") is the governing body of an independent agency of the State, organized and existing pursuant to Article 15 of the Illinois Pension Code, 40 ILCS 5/15-101 *et seq.* The SURS Board of Trustees is sued in its official capacity only.

ANSWER: Defendants admit the allegations in Paragraph 13.

14. Defendant Judy Baar Topinka is the Comptroller of the State, a constitutional office, charged by Article V, Section 17 of the Constitution of Illinois with the responsibility to "maintain the State's central fiscal accounts, and order payments in and out of the funds held by the Treasurer." As such, Comptroller Topinka signs paychecks or grants approval to electronic payments made by the State to its retirees. Comptroller Topinka is also the Chairperson of the SERS Board of Trustees. Comptroller Topinka is sued in her official capacity only.

ANSWER: Defendants admit the allegations in Paragraph 14. Further answering, Defendants allege that defendant Judy Baar Topinka is a nominal defendant in light of the Comptroller's official responsibilities in connection with the administration of certain transactions related to the operation of the Pension Code.

15. Defendant Dan Rutherford is the Treasurer of the State. Section 14-137 of the Pension Code designates the Treasurer Rutherford as the Treasurer of SERS and requires that all monies of SERS shall be deposited by Treasurer Rutherford in a "special trust fund." Treasurer Rutherford is sued in his official capacity only.

ANSWER: Defendants admit the allegations in Paragraph 15. Further answering, Defendants allege that defendant Dan Rutherford is a nominal defendant in light of the Treasurer's official responsibilities in connection with the administration of certain transactions related to the operation of the Pension Code.

16. Plaintiffs bring this action on behalf of a class consisting of all annuitants of SERS, GARS, TRS and SURS. The class is believed to exceed 10,000 persons, such that joinder of all members is impracticable. There are questions of law or fact common to the class; the common questions predominant over questions affecting only individual members. The representative parties and their counsel will fairly and adequately protect the interest of the class.

ANSWER: Defendants admit that Plaintiffs purport to bring this action on behalf of a class consisting of all annuitants of SERS, GARS, TRS and SURS. The remaining allegations in Paragraph 16 consist of legal conclusions that Defendants deny, and to the extent it contains any factual allegations, Defendants deny them.

17. Plaintiffs also seek the creation of a subclass of persons who availed themselves of the early retirement incentive programs announced by the State in 1991, 2002 and 2005. This subclass is believed to include over 5,000 members. Plaintiff John Mundstock is a member of the early retirement incentive programs subclass and will adequately represent the subclass.

ANSWER: Defendants admit that Plaintiffs purport to seek the creation of a subclass of persons who participated in the early retirement incentive programs established by the General Assembly and available to eligible state employees in 1991, 2002, and 2005. The remaining allegations in Paragraph 17 consist of legal conclusions that Defendants deny, and to the extent it contains any factual allegations, Defendants deny them.

18. As is explained below, Count IV implicates only the ERI subclass. With respect to the other counts, the claims of the ERI subclass are identical to those of the remaining members of the class.

ANSWER: Defendants admit the allegations in Paragraph 18.

19. Members in a public pension system of the State have a vested contractual right to receive pension benefits the moment they become members of the pensions system; that right includes the amount of their pension and the State may not unilaterally reduce those pension benefits.

ANSWER: Paragraph 19 consists of legal conclusions that Defendants deny, and to the extent it contains any factual allegations, Defendants deny them.

20. Public Act 98-599, which was signed into law on December 5, 2013, diminishes the rights of Plaintiffs and their class to receive pension benefits and creates an immediate danger that Plaintiffs and their class will not receive the pension benefits which they were promised and to which they are entitled under Illinois law.

ANSWER: Defendants admit that Public Act 98-599 was signed into law on December 5, 2013. The remainder of Paragraph 20 consists of legal conclusions that Defendants deny, and to the extent it contains any factual allegations, Defendants deny them.

21. Sections 14-101 and 14-102 of the Illinois Pension Code, 40 ILCS 5/14-101 and 14/102, define the business and purpose of SERS as follows:

Sec. 14-101. Creation of system. A retirement and benefit system is created to provide retirement annuities and other benefits for employees of the State of Illinois. The systems shall be known as the "State Employees' Retirement System of Illinois". By such name all its business shall be transacted and its cash and other property held in trust for the purposes of this Article.

Sec. 14-102. Purpose. The purpose of the system is to provide an orderly means whereby aged or disabled employees may be retired from active service, without prejudice or hardship, and to enable the employees to accumulate reserves for themselves and their dependents for old age, disability, death and termination of employment, thus effecting economy and efficiency in the administration of the State Government.

ANSWER: Defendants admit that Paragraph 21 accurately quotes 40 ILCS 5/14-101 and 14-102.

22. The named Plaintiffs and the members of the class were promised, as a term and condition of their employment, and as a "benefit" accompanying their membership in a pension or retirement system of the State, and as an enforceable contractual relationship, that they would be entitled to a 3 % annual automatic increase in their annuity each year.

ANSWER: Defendants deny the allegations in Paragraph 22.

23. This annual automatic increase has recently been falsely referred to as the annual Cost of Living ("COLA") adjustment. That designation is inaccurate, because the 3 % annual increase is independent of any increase or decrease in the cost of living. That is, the automatic increase has, since it was first added to the Pension Code in 1969 until December 5, 2013, never hinged on increases in the consumer price index ("CPI") or other measure of inflation. Nor did the Pension Code refer to the Annual Increase as a cost of living

adjustment or COLA. Accordingly, Plaintiffs will refer to the increase as the "Automatic Increase."

ANSWER: Defendants admit that the annual automatic increase is frequently called an annual Cost of Living adjustment ("COLA"), admit that the annual automatic increase was not formally based on the consumer price index or other measure of inflation, and that the Pension Code does not expressly refer to the annual automatic increase as a cost of living adjustment or COLA. Defendants deny the remaining allegations in Paragraph 23. Further answering, Defendants state that the purpose of the annual automatic increases in the Pension Code was to mitigate in part the effects of increases in the cost of living, that the General Assembly has regularly changed the rate of such increases, that such changes since 1970 have been included in the Pension Code without requiring active system members to make any contributions higher than before those changes, and that the most recent changes in annual automatic increases added to the Pension Code were extended to persons who had already retired and ceased making any contributions to their retirement system.

24. Prior to 1969, a SERS annuity was fixed as of the date of the annuitant's retirement.

ANSWER: Defendants admit the allegations in Paragraph 24.

25. Section 14-153.1, titled "Automatic Increase in Service Retirement Allowance," was added to the Illinois Pension Code by Public Act 76-748, effective August 15, 1969, prior to the adoption of the 1970 Constitution.

a. It provided that "[a]n employee eligible for a service retirement annuity under this Article who retires from service on or after December 31, 1969, having attained age 60, shall on January 1 next following the first full year of retirement, have the amount of his then fixed and payable monthly retirement annuity increased by 1 ½ %. On January of each succeeding year thereafter, concurrently with retirement annuity payments to the retired employee, the employee's original monthly retirement annuity shall be increased by an additional 1 ½ % until the total additional payments reach 30 %."

b. It also mandated an increase in SERS members' salary deductions at the rate of ½

% of salary beginning January 1, 1970 and required the State to match the salary deduction with an additional ½ % contribution.

- c. In short, Public Act 76-748 required that future annuitants pay for future increases in their annuities through present salary deductions and that the State would match its employees' salary deductions to pay for Automatic Increases.

ANSWER: Defendants admit that Public Act 76-748 added Section 14-153.1 to the Illinois Pension Code, that Section 14-153.1 was entitled "Automatic Increase in Service Retirement Allowance," and that Public Act 76-748 went into effect before adoption of the 1970 Constitution on August 15, 1969. Defendants further admit that Paragraph 25(a) correctly quotes language from Section 14.153.1. Defendants further admit that Public Act 76-748 required SERS members to contribute an additional .5% of their salary and required the State to make an equal contribution. Defendants deny the remaining allegations in Paragraph 25.

26. Public Act 77-292, effective July 15, 1971, eliminated the 30 % cap and provided that beginning January 1, 1972, "the rate of increase in the service retirement allowance shall be 2 %." Public Act 77-292 also replaced the term "annuity" with the word "allowance."

ANSWER: Defendants admit the allegations in Paragraph 26.

27. Public Act 80-1408, effective August 28, 1978, amended Section 14-114 by raising the Automatic Increase or "annuity" to 3 % annually.

ANSWER: Defendants admit the allegations in Paragraph 27.

28. Public Act 86-273, effective August 23, 1989, provided that as of January 1990 all Automatic Increases would be compounded. That is, new Automatic Increases would be calculated as a percentage of the total annuity, which included prior Automatic Increases.

ANSWER: Defendants admit the allegations in Paragraph 28.

29. As of December 4, 2013, Section 14-114(a) of the Pension Code stated as follows:

Sec. 14-114. Automatic increase in retirement annuity.

(a) Any person receiving a retirement annuity under this Article who retires having attained age 60, or who retires before age 60 having at least 35 years of creditable service, or who retires on or after January 1, 2001 at an age

which, when added to the number of years of his or her creditable service, equals at least 85, shall, on January 1 next following the first full year of retirement, have the amount of the then fixed and payable monthly retirement annuity increased 3%. Any person receiving a retirement annuity under this Article who retires before attainment of age 60 and with less than (i) 35 years of creditable service if retirement is before January 1, 2001, or (ii) the number of years of creditable service which, when added to the member's age, would equal 85, if retirement is on or after January 1, 2001, shall have the amount of the fixed and payable retirement annuity increased by 3% on the January 1 occurring on or next following (1) attainment of age 60, or (2) the first anniversary of retirement, whichever occurs later. However, for persons who receive the alternative retirement annuity under Section 14-110, references in this subsection (a) to attainment of age 60 shall be deemed to refer to attainment of age 55. For a person receiving early retirement incentives under Section 14-108.3 whose retirement annuity began after January 1, 1992 pursuant to an extension granted under subsection (e) of that Section, the first anniversary of retirement shall be deemed to be January 1, 2001, and whose retirement annuity is calculated, in whole or in part, under Section 14-110 or subsection (g) or (h) of Section 14-108, the first anniversary of retirement shall be deemed to be January 1, 2002.

On each January 1 following the date of the initial increase under this subsection, the employee's monthly retirement annuity shall be increased by an additional 3%.

Beginning January 1, 1990, all automatic annual increases payable under the Section shall be calculated as a percentage of the total annuity payable at the time of the increase, including previous increases granted under this Article.

ANSWER: Defendants admit that Paragraph 29 purports to quote the language of Section 14-114(a) of the Pension Code as of December 4, 2013. Defendants further state that Paragraph 29 is not a full and accurate quotation of 40 ILCS 5/14-114(a) because it contains several typographical errors. Defendants deny the remaining allegations in Paragraph 29.

30. On December 5, 2013, Governor Pat Quinn signed Public Act 98-599, which diminishes and impairs Plaintiffs' ability to receive the Automatic Increase (new language underlined, deleted language ~~stricken~~):

Sec. 14-114. Automatic increase in retirement annuity.

(a) This subsection (a) is subject to subsections (a-1) and (a-2) of this Section. Any person receiving a retirement annuity under this Article who retires having attained age 60, or who retires before age 60 having at least 35 years of creditable service, or who retires on or after January 1, 2001 at an age which, when added to the number of years of his or her creditable service, equals at least 85, shall, on January 1 next following the first full year of retirement, have the amount of the then fixed and payable monthly retirement annuity increased 3%.

(a-1) Notwithstanding subsection (a), but subject to the provisions of subsection (a-2), all automatic increases payable under subsection (a) on or after the effective date of this amendatory Act of the 98th General Assembly shall be calculated as 3% of the lesser of (1) the total annuity payable at the time of the increase, including previous increases granted, or (2) \$800 (\$1,000 for portions of the annuity based on service as a noncovered employee) multiplied by the number of years of creditable service upon which the annuity is based.

Beginning January 1, 2016, the \$800 (\$1,000 for portions of the annuity based on service as a noncovered employee) referred in item (2) of this subsection (a-1) shall be increased on each January 1 by the annual unadjusted percentage increase (but not less than zero) in the consumer price index-u for the 12 months ending with the preceding September; these adjustments shall be cumulative and compounded. For the purposes of this subsection (a-1), "consumer price index-u" means the index published by the Bureau of Labor Statistics of the United States Department of Labor that measures the average change in prices of goods and services purchased by all urban consumers, United States city average, all items, 1982-84 = 100. The new dollar amount resulting from each annual adjustment shall be determined by the Public Pension Division of the Department of Insurance and made available to the System by November 1 of each year.

This subsection (a-1) is applicable without regard to whether the person is in service on or after the effective date of this amendatory Act of the 98th General Assembly.

(a-2) Notwithstanding subsections (a) and (a-1), for an active or inactive Tier 1 member who has not begun to receive a retirement annuity under this Article before July 1, 2014:(1) the second automatic annual increase payable

(2) the second, fourth, and sixth automatic annual

(3) the second, fourth, sixth, and eighth automatic

(4) the second, fourth, sixth, eighth, and tenth

For the purposes of Section 1-103.1, this subsection (a-2) is applicable without regard to whether the person is in service on or after the effective date of this amendatory Act of the 98th General Assembly.

ANSWER: Defendants admit that Paragraph 30 accurately quotes portions of Section 14-114(a) of the Pension Code as of December 5, 2013. Defendants also admit that Paragraph 30 accurately quotes Sections 14-114(a-1) of the Pension Code. Defendants deny that Paragraph 30 accurately quotes Section 14-114(a-2) of the Pension Code and deny the remaining allegations in Paragraph 30.

31. Plaintiffs Robert Silger and John Mundstock are among the SERS retirees whose pensions benefits are diminished and impaired.

ANSWER: Defendants deny the allegations in Paragraph 31.

32. Section 2-101 of the Illinois Pension Code, 40 ILCS 5/2-101, defines the business of GARS as follows:

Sec. 2-101. Creation of system. A retirement system is created to provide retirement annuities, survivor's annuities and other benefits for members of the General Assembly, certain elected state officials and their beneficiaries.

The system shall be known as the "General Assembly Retirement System". All its funds and property shall be a trust separate from all other entities, maintained for the purpose of securing payment of annuities and benefits under this Article.

ANSWER: Defendants admit that Paragraph 32 accurately quotes the language of 40 ILCS 5/2-101.

33. As of December 4, 2013, Section 2-119.1(a) of the Pension Code stated as follows:

Sec. 2-119.1. Automatic increase in retirement annuity.

(a) A participant who retires after June 30, 1967, and who has not received an initial increase under this Section before the effective date of this amendatory Act of 1991, shall, in January or July next following the first

anniversary of retirement, whichever occurs first, and in the same month of each year thereafter, but in no event prior to age 60, have the amount of the originally granted retirement annuity increased as follows: for each year through 1971, 1 ½%; for each year from 1972 through 1979, 2%; and for 1980 and each year thereafter, 3%. Annuitants who have received an initial increase under this subsection prior to the effective date of this amendatory Act of 1991 shall continue to receive their annual increases in the same month as the initial increase.

ANSWER: Defendants admit that Paragraph 33 accurately quotes the language of Section 2-119.1(a) of the Pension Code as of December 4, 2013.

34. On December 5, 2013, Governor Pat Quinn signed Public Act 98-599, which diminishes and impairs Plaintiffs' ability to receive the Automatic Increase:

Sec. 2-119.1. Automatic increase in retirement annuity.

(a) Except as otherwise provided in this Section, a A participant who retires after June 30, 1967, and who has not received an initial increase under this Section before the effective date of this amendatory Act of 1991, shall, in January or July next following the first anniversary of retirement, whichever occurs first, and in the same month of each year thereafter, but in no event prior to age 60, have the amount of the originally granted retirement annuity increased as follows: for each year through 1971, 1 ½%; for each year from 1972 through 1979, 2%; and for 1980 and each year thereafter, 3%. Annuitants who have received an initial increase under this subsection prior to the effective date of this amendatory Act of 1991 shall continue to receive their annual increases in the same month as the initial increase.

(a-1) Notwithstanding subsection (a), but subject to the provisions of subsection (a-2), for a Tier 1 retiree, all automatic increases payable under subsection (a) on or after the effective date of this amendatory Act of the 98th General Assembly shall be calculated as 3% of the lesser of (1) the total annuity payable at the time of the increase, including previous increases granted, or (2) \$1,000 multiplied by the number of years of creditable service upon which the annuity is based.

Beginning January 1, 2016, the \$1,000 referred to in item (2) of this subsection (a-1) shall be increased on each January 1 by the annual unadjusted percentage increase (but not less than zero) in the consumer price index-u for the 12 months ending with the preceding September; these adjustments shall be cumulative and compounded. For the purposes of this subsection (a-1), "consumer price index-u" means the index published by

the Bureau of Labor Statistics of the United States Department of Labor that measures the average change in prices of goods and services purchased by all urban consumers, United States city average, all items, 1982-84 = 100. The new dollar amount resulting from each annual adjustment shall be determined by the Public Pension Division of the Department of Insurance and made available to the System by November 1 of each year.

This subsection (a-1) is applicable without regard to whether the person is in service on or after the effective date of this amendatory Act of the 98th General Assembly.

(a-2) Notwithstanding subsections (a) and (a-1), for an active or inactive Tier 1 participant who has not begun to receive a retirement annuity under this Article before July 1, 2014:

(1) the second automatic annual increase payable under subsection (a) shall be at the rate of 0% of the total annuity payable at the time of the increase if he or she is at least age 50 on the effective date of this amendatory Act;

(2) the second, fourth, and sixth automatic annual increases payable under subsection (a) shall be at the rate of 0% of the total annuity payable at the time of the increase if he or she is at least age 47 but less than age 50 on the effective date of this amendatory Act;

(3) the second, fourth, sixth, and eighth automatic annual increases payable under subsection (a) shall be at the rate of 0% of the total annuity payable at the time of the increase if he or she is at least age 44 but less than age 47 on the effective date of this amendatory Act; and

(4) the second, fourth, sixth, eighth, and tenth automatic annual increases payable under subsection (a) shall be at the rate of 0% of the total annuity payable at the time of the increase if he or she is less than age 44 on the effective date of this amendatory Act.

For the purposes of Section 1-103.1, this subsection (a-2) is applicable without regard to whether the person is in service on or after the effective date of this amendatory Act of the 98th General Assembly.

ANSWER: Defendants admit that Paragraph 34 accurately quotes the language of Sections 2-119.1(a), 2-119.1(a-1), and 2-119.1(a-2) of the Pension Code as of December 5, 2013, including the changes implemented by Public Act 98-599. Defendants deny the remaining allegations in Paragraph 34.

35. Plaintiff Gwenn Klingler is among the GARS retirees whose pensions benefits are diminished and impaired.

ANSWER: Defendants deny the allegations in Paragraph 35.

36. Section 16-101 of the Illinois Pension Code, 40 ILCS 5/16-101, defines the business of TRS as follows:

Sec. 16-101. Creation of system. Effective July 1, 1939, there is created the "Teachers' Retirement System of the State of Illinois" for the purpose of providing retirement annuities and other benefits for teachers, annuitants and beneficiaries. All of its business shall be transacted, its funds invested, and its assets held in such name.

ANSWER: Defendants admit that Paragraph 36 accurately quotes the language of 40 ILCS 5/16-101.

37. As of December 4, 2013, Section 16-133.1(a) of the Pension Code stated as follows:

Sec. 16-133.1. Automatic annual increase in annuity.

(a) Each member with creditable service and retiring on or after August 26, 1969 is entitled to the automatic annual increases in annuity provided under this Section while receiving a retirement annuity or disability retirement annuity from the system.

An annuitant shall first be entitled to an initial increase under this Section on the January 1 next following the first anniversary of retirement, or January 1 of the year next following attainment of age 61, whichever is later. At such time, the system shall pay an initial increase determined as follows:

(1) 1.5% of the originally granted retirement annuity or disability retirement annuity multiplied by the number of years elapsed, if any, from the date of retirement until January 1, 1972, plus

(2) 2% of the originally granted annuity multiplied by the number of years elapsed, if any, from the date of retirement or January 1, 1972, whichever is later, until January 1, 1978, plus

(3) 3% of the originally granted annuity multiplied by the number of years elapsed from the date of retirement or January 1, 1978, whichever is later, until the effective date of the initial increase.

However, the initial annual increase calculated under this Section for the recipient of a disability retirement annuity granted under Section 16-149.2 shall be reduced by an amount equal to the total of all increases in that annuity received under Section 16-149.5 (but not exceeding 100% of the amount of the initial increase otherwise provided under this Section).

Following the initial increase, automatic annual increases in annuity shall be payable on each January 1 thereafter during the lifetime of the annuitant, determined as a percentage of the originally granted retirement annuity or disability retirement annuity for increases granted prior to January 1, 1990, and calculated as a percentage of the total amount of annuity, including previous increases under this Section, for increases granted on or after January 1, 1990, as follows: 1.5% for periods prior to January 1, 1972, 2% for periods after December 31, 1971 and prior to January 1, 1978, and 3% for periods after December 31, 1977.

ANSWER: Defendants admit that Paragraph 37 accurately quotes the language of Section 16-113.1(a) of the Pension Code as of December 4, 2013.

38. On December 5, 2013, Governor Pat Quinn signed Public Act 98-599, which diminishes and impairs Plaintiffs' ability to receive the Automatic Increase:

Sec. 16-133.1. Automatic annual increase in annuity.

(a) This subsection (a) is subject to subsections (a-1) and (a-2). Each member with creditable service and retiring on or after August 26, 1969 is entitled to the automatic annual increases in annuity provided under this Section while receiving a retirement annuity or disability retirement annuity from the system.

An annuitant shall first be entitled to an initial increase under this Section on the January 1 next following the first anniversary of retirement, or January 1 of the year next following attainment of age 61, whichever is later. At such time, the system shall pay an initial increase determined as follows:

(1) 1.5% of the originally granted retirement annuity or disability retirement annuity multiplied by the number of years elapsed, if any, from the date of retirement until January 1, 1972, plus

(2) 2% of the originally granted annuity multiplied by the number of years elapsed, if any, from the date of retirement or January 1, 1972, whichever is later, until January 1, 1978, plus

(3) 3% of the originally granted annuity multiplied by the number of years elapsed from the date of retirement or January 1, 1978, whichever is later, until the effective date of the initial increase.

However, the initial annual increase calculated under this Section for the recipient of a disability retirement annuity granted under Section 16-149.2 shall be reduced by an amount equal to the total of all increases in that annuity received under Section 16-149.5 (but not exceeding 100% of the amount of the initial increase otherwise provided under this Section).

Following the initial increase, automatic annual increases in annuity shall be payable on each January 1 thereafter during the lifetime of the annuitant, determined as a percentage of the originally granted retirement annuity or disability retirement annuity for increases granted prior to January 1, 1990, and calculated as a percentage of the total amount of annuity, including previous increases under this Section, for increases granted on or after January 1, 1990, as follows: 1.5% for periods prior to January 1, 1972, 2% for periods after December 31, 1971 and prior to January 1, 1978, and 3% for periods after December 31, 1977.

(a-1) Notwithstanding subsection (a), but subject to the provisions of subsection (a-2), all automatic increases payable under subsection (a) on or after the effective date of this amendatory Act of the 98th General Assembly shall be calculated as 3% of the lesser of (1) the total annuity payable at the time of the increase, including previous increases granted, or (2) \$1,000 multiplied by the number of years of creditable service upon which the annuity is based; however, in the case of an initial increase under subsection (a) that is subject to this subsection:

(I) if more than one year has elapsed from the date of retirement to the effective date of the initial increase under this Section, the applicable percentage shall be the sum of the percentages for each such elapsed year; and

(ii) in the case of a disability retirement annuity granted under Section 16-149.2, the initial increase shall be subject to the reduction provided in subsection (a) for increases previously received under Section 16-149.5. Beginning January 1, 2016, the \$1,000 referred to in item(2) of this subsection (a-1) shall be increased on each January by the annual unadjusted percentage increase (but not less than zero) in the consumer price index-u for the 12 month ending with the preceding September; these adjustments shall be cumulative and compounded. For the purposes of this subsection (a-1), "consumer price index-u" means the index published by the Bureau of Labor Statistics of the United States Department of Labor that measures the average change in prices of good and services purchased by

all urban consumers, United States city average, all items, 1982-84 = 100. The new dollar amount resulting from each annual adjustment shall be determined by the Public Pension Division of the Department of Insurance and made available to the System by November 1 of each year.

This subsection (a-1) is applicable without regard to whether the person is in service on or after the effective date of this amendatory Act of the 98th General Assembly.

(a-2) Notwithstanding subsections (a) and (a-1), for an active or inactive Tier 1 member who has not begun to receive a retirement annuity under this Article before July 1, 2014:

(1) the second automatic annual increase payable under subsection (a) shall be at the rate of 0% of the total annuity payable at the time of the increase if he or she is at least age 50 on the effective date of this amendatory Act;

(2) the second, fourth, and sixth automatic annual increases payable under subsection (a) shall be at the rate of 0% of the total annuity payable at the time of the increase if he or she is at least age 47 but less than age 50 on the effective date of this amendatory Act;

(3) the second, fourth, sixth, and eighth automatic annual increases payable under subsection (a) shall be at the rate of 0% of the total annuity payable at the time of the increase if he or she is at least age 44 but less than age 47 on the effective date of this amendatory Act; and

(4) the second, fourth, sixth, eighth, and tenth automatic annual increases payable under subsection (a) shall be at the rate of 0% of the total annuity payable at the time of the increase if he or she is less than age 44 on the effective date of this amendatory Act.

For the purposes of Section 1-103.1, this subsection (a-2) is applicable without regard to whether the person is in service on or after the effective date of this amendatory Act of the 98th General Assembly.

ANSWER: Defendants admit that Paragraph 38 accurately quotes the language of Sections 16-133.1(a) and 16-133.1(a-1) of the Pension Code as of December 5, 2013, including the changes implemented by Public Act 98-599. Defendants admit that Paragraph 38 purports to quote the language of Section 16-133.1(a-2) of the Pension Code. Defendants further state that Paragraph 38 is not a full and accurate quotation of 40 ILCS 5/16-133.1(a-2) because it contains several

typographical errors. Defendants deny the remaining allegations in Paragraph 38.

39. Plaintiff Barbara Schob is among the TRS retirees whose pensions benefits are diminished and impaired in violation of the Pension Protection Clause.

ANSWER: Defendants deny the allegations in Paragraph 7.

40. Section 15-101 of the Illinois Pension Code, 40 ILCS 5/15-101, defines the business of SURS as follows:

Sec. 15-101. Creation of system. A retirement system is created to provide retirement annuities and other benefits for employees, as defined in this Article, and their dependents.

The system shall be known and may be cited as State Universities Retirement System. All the business of the system shall be transacted in that name.

ANSWER: Defendants admit that Paragraph 40 accurately quotes the language of 40 ILCS 5/15-101.

41. As of December 4, 2013, Section 15-163(d) of the Pension Code stated as follows:

Sec. 15-136. Retirement annuities - Amount. The provisions of this Section 15-136 apply only to those participants who are participating in the traditional benefit package or the portable benefit package and do not apply to participants who are participating in the self-managed plan.

(d) A Tier 1 member whose status as an employee terminates after August 14, 1969 shall receive automatic increases in his or her retirement annuity as follows:

Effective January 1 immediately following the date the retirement annuity begins, the annuitant shall receive an increase in his or her monthly retirement annuity of 0.125% of the monthly retirement annuity provided under Rule 1, Rule 2, Rule 3, or Rule 4 contained in this Section, multiplied by the number of full months which elapsed from the date the retirement annuity payments began to January 1, 1972, plus 0.1667% of such annuity, multiplied by the number of full months which elapsed from January 1, 1972, or the date the retirement annuity payments began, whichever is later, to January 1, 1978, plus 0.25% of such annuity multiplied by the number of full months which elapsed from January 1, 1978, or the date the retirement annuity payments began, whichever is later, to the effective date of the

increase.

The annuitant shall receive an increase in his or her monthly retirement annuity on each January 1 thereafter during the annuitant's life of 3% of the monthly annuity provided under Rule 1, Rule 2, Rule 3, or Rule 4 contained in this Section. The change made under this subsection by P.A. 81-970 is effective January 1, 1980 and applies to each annuitant whose status as an employee terminates before or after that date.

Beginning January 1, 1990, all automatic annual increases payable under this Section shall be calculated as a percentage of the total annuity payable at the time of the increase, including all increases previously granted under this Article.

The change made in this subsection by P.A. 85-1008 is effective January 26, 1988, and is applicable without regard to whether status as an employee terminated before that date.

ANSWER: Defendants deny that Paragraph 41 accurately quotes the language of 40 ILCS 5/15-163(d). Defendants admit that Paragraph 41 accurately quotes the language of Section 15-136(d) of the Pension Code as of December 4, 2013. Defendants deny the remaining allegations in Paragraph 41.

42. On December 5, 2013, Governor Pat Quinn signed Public Act 98-599, which diminishes and impairs Plaintiffs' ability to receive the Automatic Increase:

Sec. 15-136. Retirement annuities - Amount. The provisions of this Section 15-136 apply only to those participants who are participating in the traditional benefit package or the portable benefit package and do not apply to participants who are participating in the self-managed plan.

(d) This subsection (d) is subject to subsections (d-1) and (d-2). A Tier 1 member whose status as an employee terminates after August 14, 1969 shall receive automatic increases in his or her retirement annuity as follows:

Effective January 1 immediately following the date the retirement annuity begins, the annuitant shall receive an increase in his or her monthly retirement annuity of 0.125% of the monthly retirement annuity provided under Rule 1, Rule 2, Rule 3, or Rule 4 contained in this Section, multiplied by the number of full months which elapsed from the date the retirement annuity payments began to January 1, 1972, plus 0.1667% of such annuity, multiplied by the number of full months which elapsed from January 1,

1972, or the date the retirement annuity payments began, whichever is later, to January 1, 1978, plus 0.25% of such annuity multiplied by the number of full months which elapsed from January 1, 1978, or the date the retirement annuity payments began, whichever is later, to the effective date of the increase.

The annuitant shall receive an increase in his or her monthly retirement annuity on each January 1 thereafter during the annuitant's life of 3% of the monthly annuity provided under Rule 1, Rule 2, Rule 3, or Rule 4 contained in this Section. The change made under this subsection by P.A. 81-970 is effective January 1, 1980 and applies to each annuitant whose status as an employee terminates before or after that date.

Beginning January 1, 1990, all automatic annual increases payable under this Section shall be calculated as a percentage of the total annuity payable at the time of the increase, including all increases previously granted under this Article.

The change made in this subsection by P.A. 85-1008 is effective January 26, 1988, and is applicable without regard to whether status as an employee terminated before that date.

(d-1) Notwithstanding subsection (d), but subject to the provisions of subsection (d-2), all automatic increases payable under subsection (d) on or after the effective date of this amendatory Act of the 98th General Assembly shall be calculated as 3% of the lesser of (1) the total annuity payable at the time of the increase, including previous increases granted, or (2) \$1,000 multiplied by the number of years of creditable service upon which the annuity is based; however, in the case of an initial increase subject to this subsection, the amount of that increase shall be prorated if less than one year has elapsed since retirement.

Beginning January 1, 2016, the \$1,000 referred to in item (2) of this subsection (d-1) shall be increased on each January 1 by the annual unadjusted percentage increase (but not less than zero) in the consumer price index-u for the 12 months ending with the preceding September; these adjustments shall be cumulative and compounded. For the purposes of this subsection (d-1), "consumer price index-u" means the index published by the Bureau of Labor Statistics of the United States Department of Labor that measures the average change in prices of goods and services purchased by all urban consumers, United States city average, all items, 1982-84 = 100. The new dollar amount resulting from each annual adjustment shall be determined by the Public Pension Division of the Department of Insurance and made available to the System by November 1 of each year.

This subsection (d-1) is applicable without regard to whether the person is in service on or after the effective date of this amendatory Act of the 98th General Assembly.

(d-2) Notwithstanding subsections (d) and (d-1), for an active or inactive Tier 1 member who has not begun to receive a retirement annuity under this Article before July 1, 2014:

(1) the automatic annual increase payable under subsection (d) the second January following the date the retirement annuity begins shall be equal to 0% of the total annuity payable at the time of the increase, if he or she is at least age 50 on the effective date of this amendatory Act;

(2) the automatic annual increase payable under subsection (d) the second, fourth, and sixth January following the date the retirement annuity begins shall be equal to 0% of the total annuity payable at the time of the increase, if he or she is at least age 47 but less than age 50 on the effective date of this amendatory Act;

(3) the automatic annual increase payable under subsection (d) the second, fourth, sixth, and eighth January following the date the retirement annuity begins shall be equal to 0% of the total annuity payable at the time of the increase, if he or she is at least age 44 but less than age 47 on the effective date of this amendatory Act;

(4) the automatic annual increase payable under subsection (d) the second, fourth, sixth, eighth, and tenth January following the date the retirement annuity begins shall be equal to 0% of the total annuity payable at the time of the increase, if he or she is less than age 44 on the effective date of this amendatory Act.

ANSWER: Defendants admit that Paragraph 42 accurately quotes the language of Sections 15-136(d), 15-136(d-1), and 15-136(d-2) of the Pension Code as of December 5, 2013, including the changes implemented by Public Act 98-599. Defendants deny the remaining allegations in Paragraph 42.

43. Plaintiff Barbara Maxeiner is among the SURS retirees whose pensions benefits are diminished and impaired.

ANSWER: Defendants deny the allegations in Paragraph 43.

COUNT I: Pension Protection Clause of Illinois Constitution

1-43. Plaintiffs reallege paragraphs 1-43 of the Allegations Common to all Counts as and for paragraphs 1-43 of Count I.

ANSWER: Defendants incorporate their answers to Paragraphs 1-43.

44. Article XIII, Section 5 of the Illinois Constitution, entitled "Pension and Retirement Rights" provides as follows:

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.

ANSWER: Defendants admit the allegations in Paragraph 44.

45. Public Act 98-599 is unconstitutional in violation of Article XIII, Section 5 of the Illinois Constitution, because it diminishes and impairs the membership rights of Plaintiffs retirees in their SERS, GARS, TRS and SURS benefits by diminishing and impairing their Automatic Increases.

ANSWER: Paragraph 45 consists of legal conclusions that Defendants deny, and to the extent it contains any factual allegations, Defendants deny them.

46. Defendants deny that Public Act 98-599 is unconstitutional and plan to implement Public Act 98-599 on its effective date.

ANSWER: Defendants admit that they assert in this case that Public Act 98-599 is constitutional and that they intend to implement it according to its terms unless ordered not to do so by a valid court order or judgment.

47. There is a controversy between the named Plaintiffs and the members of the class on one hand, and Defendants, on the other, as to the constitutional validity of Public Act 98-599, such that declaratory and injunctive relief is appropriate.

ANSWER: Defendants admit that a controversy exists as to the constitutional validity of Public Act 98-599. The remaining allegations in Paragraph 47 consist of legal conclusions that Defendants deny, and to the extent it contains any factual allegations, Defendants deny them.

48. The named Plaintiffs and the members of the class have no adequate remedy at law, and should Defendant fail to pay the Plaintiffs their 3% Automatic Increase, the named Plaintiffs and the members of the class will suffer irreparable injury.

ANSWER: Paragraph 48 consists of legal conclusions that Defendants deny, and to the extent it contains any factual allegations, Defendants deny them.

49. To protect Plaintiffs during the pendency of this litigation, this Court should enter preliminary injunctive relief ordering the establishment of an escrow into which Defendants will pay the difference between the amounts to which Plaintiffs would be entitled before and after the effective date of Public Act 98-599 as it relates to Automatic Increases.

ANSWER: Paragraph 49 consists of legal conclusions that Defendants deny, and to the extent it contains any factual allegations, Defendants deny them.

COUNT II: Contracts Clause of the Illinois Constitution

1-43. Plaintiffs reallege paragraphs 1-43 of the Allegations Common to all Counts and for paragraphs 1-43 of Count II.

ANSWER: Defendants incorporate their answers to Paragraphs 1-43.

50. Article XIII, Section 5 of the Illinois Constitution defines membership in a pension system as an "enforceable contractual relationship: "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."

ANSWER: Defendants admit that Paragraph 50 accurately quotes Article XII, Section 5 of the Illinois Constitution.

51. Article I, Section 16 of the Illinois Constitution "No ex post facto law, or law impairing the obligation of contracts or making an irrevocable grant of special privileges or immunities, shall be passed."

ANSWER: Defendants admit that Paragraph 51 accurately quotes Article I, Section 16 of the Illinois Constitution.

52. By performing at least 20 years of loyal service and paying a percentage of their salary towards the Automatic Increase, the named Plaintiffs and members of Plaintiff class gave good and valuable consideration to the State of Illinois; they are entitled to the benefit of

their contract.

ANSWER: Paragraph 52 consists of legal conclusions that Defendants deny. Defendants admit that some of the Plaintiffs and members of the purported plaintiff class worked as state employees for at least 20 years and made contributions to their respective retirement systems. To the extent Paragraph 52 contains any other factual allegations, Defendants deny them.

53. Public Act 98-599 is a law impairing the obligation of contracts in violation of Article I, Section 16 of the Illinois Constitution.

ANSWER: Defendants deny the allegations of Paragraph 53.

54. There is a controversy between the named Plaintiffs and the members of the class on one hand, and Defendants, on the other, as to the constitutional validity of Public Act 98-599, such that declaratory and injunctive relief is appropriate.

ANSWER: Defendants admit that a controversy exists as to the constitutional validity of Public Act 98-599. The remaining allegations in Paragraph 54 consist of legal conclusions that Defendants deny, and to the extent it contains any factual allegations, Defendants deny them.

55. The named Plaintiffs and the members of the class have no adequate remedy at law, and should Defendant fail to pay the Plaintiffs their 3% Automatic Increase, the named Plaintiffs and the members of the class will suffer irreparable injury.

ANSWER: Paragraph 55 consists of legal conclusions that Defendants deny, and to the extent it contains any factual allegations, Defendants deny them.

56. To protect Plaintiffs during the pendency of this litigation, this Court should enter preliminary injunctive relief ordering the establishment of an escrow into which Defendants will pay the difference between the amounts to which Plaintiffs would be entitled before and after the effective date of Public Act 98-599 as it relates to Automatic Increases.

ANSWER: Paragraph 56 consists of legal conclusions that Defendants deny, and to the extent it contains any factual allegations, Defendants deny them.

COUNT III: Equal Protection Clause of the Illinois Constitution

1-43. Plaintiffs reallege paragraphs 1-43 of the Allegations Common to all Counts as and for paragraphs 1-43 of Count III.

ANSWER: Defendants incorporate their answers to Paragraphs 1-43.

57. Article I, Section 2 of the Illinois Constitution, entitled "Due Process and Equal Protection" provides as follows: "No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws."

ANSWER: Defendants admit that Paragraph 57 accurately quotes Article I, Section 2 of the Illinois Constitution.

58. Public Act 98-599 diminished and impaired the 3% Automatic Increase for SERS, GARS, TRS and SURS annuitants.

ANSWER: Defendants deny the allegations in Paragraph 58.

59. However, it left in place the 3 % Automatic Increase provided for in the Judges Retirement System of Illinois.

ANSWER: Defendants admit the allegations in Paragraph 59.

60. Section 18-125.1 of the Pension Code (the Judges Retirement System), left unchanged by Public Act 98-599, provides:

Sec. 18-125.1. Automatic increase in retirement annuity.

A participant who retires from service after June 30, 1969, shall, in January of the year next following the year in which the first anniversary of retirement occurs, and in January of each year thereafter, have the amount of his or her originally granted retirement annuity increased as follows: for each year up to and including 1971, 1 1/2%; for each year from 1972 through 1979 inclusive, 2%; and for 1980 and each year thereafter, 3%.

Notwithstanding any other provision of this Article, a retirement annuity for a participant who first serves as a judge on or after January 1, 2011 (the effective date of Public Act 96-889) shall be increased in January of the year next following the year in which the first anniversary of retirement occurs, but in no event prior to age 67, and in January of each year thereafter, by an amount equal to 3% or the annual percentage increase in the consumer price index-u as determined by the Public Pension Division of the Department of Insurance under subsection (b-5) of Section 18-125, whichever is less, of the retirement annuity then being paid.

This Section is not applicable to a participant who retires before he or she has made contributions at the rate prescribed in Section 18-133 for automatic increases for not less than the equivalent of one full year, unless such a participant arranges to pay the system the amount required to bring the total contributions for the automatic increase to the equivalent of one year's contribution based upon his or her last year's salary.

This Section is applicable to all participants in service after June 30, 1969 unless a participant has elected, prior to September 1, 1969, in a written direction filed with the board not to be subject to the provisions of this Section. Any participant in service on or after July 1, 1992 shall have the option of electing prior to April 1, 1993, in a written direction filed with the board, to be covered by the provisions of the 1969 amendatory Act. Such participant shall be required to make the aforesaid additional contributions with compound interest at 4% per annum.

Any participant who has become eligible to receive the maximum rate of annuity and who resumes service as a judge after receiving a retirement annuity under this Article shall have the amount of his or her retirement annuity increased by 3% of the originally granted annuity amount for each year of such resumed service, beginning in January of the year next following the date of such resumed service, upon subsequent termination of such resumed service.

Beginning January 1, 1990, all automatic annual increases payable under this Section shall be calculated as a percentage of the total annuity payable at the time of the increase, including previous increases granted under this Article.

ANSWER: Defendants admit that Paragraph 60 accurately quotes the language of Section 18-125.1 of the Pension Code.

61. There is no constitutionally defensible basis in fact or law to allow annuitants in the Judges Retirement System to continue receiving the 3% Automatic Increases, while diminishing the pensions of annuitants in the State's other retirement systems by reducing the Automatic Increases in those systems.

ANSWER: Paragraph 61 consists of legal conclusions that Defendants deny, and to the extent it contains any factual allegations, Defendants deny them. Further answering, Defendants allege that the General Assembly reasonably could have concluded that not amending other Articles of the Pension Code as part of Public Act 98-599, including Article 18, is rationally related to a

legitimate purpose.

62. There is a controversy between the named Plaintiffs and the members of the class on one hand, and Defendants, on the other, as to the constitutional validity of Public Act 98-599, such that declaratory and injunctive relief is appropriate.

ANSWER: Defendants admit that a controversy exists as to the constitutional validity of Public Act 98-599. The remaining allegations in Paragraph 62 consist of legal conclusions that Defendants deny, and to the extent it contains any factual allegations, Defendants deny them.

63. The named Plaintiffs and the members of the class have no adequate remedy at law, and should Defendants fail to pay the Plaintiffs their 3% Automatic Increase, the named Plaintiffs and the members of the class will suffer irreparable injury.

ANSWER: Paragraph 63 consists of legal conclusions that Defendants deny, and to the extent it contains any factual allegations, Defendants deny them.

64. To protect Plaintiffs during the pendency of this litigation, this Court should enter preliminary injunctive relief ordering the establishment of an escrow into which Defendants will pay the difference between the amounts to which Plaintiffs would be entitled before and after the effective date of Public Act 98-599 as it relates to Automatic Increases.

ANSWER: Paragraph 64 consists of legal conclusions that Defendants deny, and to the extent it contains any factual allegations, Defendants deny them.

COUNT IV: Impairment of Contract-ERI Participants

1-43. Plaintiffs reallege paragraphs 1-43 of the Allegations Common to all Counts as and for paragraphs 1-43 of Count IV.

ANSWER: Defendants incorporate their answers to Paragraphs 1-43.

65. This Count IV is brought by ISEAR and John Mundstock and relates only to the ERI subclass.

ANSWER: Defendants admit the allegations in Paragraph 65.

66. In 1991, 2002 and 2005, the State announced Early Retirement Incentive Programs ("ERI Programs"). These programs were specifically designed to lower the personnel costs of the State by pensioning off higher paid employees with many years of service. The ERI

Programs encouraged eligible annuitants to purchase, by way of additional cash contributions, additional service credits and promised participants continued entitlement to the 3 % Automatic Increase.

ANSWER: Defendants admit that the General Assembly enacted early retirement incentive programs available to eligible state employees in 1991, 2002, and 2005. Defendants deny the remaining allegations in Paragraph 66.

67. Mr. Mundstock and the members of the ERI subclass reasonably and detrimentally relied on these promises made by the State. Their actions in reliance on these promises included but were not limited to (a) retirement from State service and (b) payment of substantial sums of cash to purchase additional service credits.

ANSWER: Defendants deny the allegations in Paragraph 67.

68. According to a report of the Commission of Government Forecasting and Accountability, in reliance on the 2002 ERI Program, John Mundstock and the over 10,000 members of the ERI subclass paid the State over \$128 million to purchase additional service credits and retired from State service. They thereby reduced the State's payroll cost over \$2.9 billion in the years 2003-2012.

ANSWER: Defendants admit that the 2002 early retirement program reduced the State's global payroll expenditures in the years after it was passed and that participants in that program made payments in connection with their election to participate in the program. Defendants lack knowledge sufficient to form a belief regarding what members of the purported ERI subclass relied upon and the accuracy of the information reported by the Commission of Government Forecasting and Accountability and therefore deny the allegations.

69. The State's promises and the ERI subclass's reliance on those promises, created implied contracts between the State and members of the ERI subclass pursuant to the principles of promissory estoppel. See Exhibit A.

ANSWER: Paragraph 69 consists of legal conclusions that Defendants deny, and to the extent it contains any factual allegations, Defendants deny them.

70. Public Act 98-599 diminishes and impairs benefits of the ERI Program in reducing those members' ability and entitlement to receive the 3 % Automatic Increase. This constitutes

an impairment of the contracts made between the State and members of the ERI subclass and, as such, violates Article I, Section 16 of the Illinois Constitution. The contractual and quasi-contractual rights obtained by participation in ERI Programs are in addition to retirees' contractual rights arising out of retirees' membership in SERS, GARS, TRS and SURS.

ANSWER: Paragraph 70 consists of legal conclusions that Defendants deny, and to the extent it contains any factual allegations, Defendants deny them.

71. There is a controversy between the named Plaintiffs and the members of the ERI subclass on the one hand, and the Defendants, on the other, as to the as to the validity of Public Act 98-599 such that declaratory and injunctive relief is appropriate.

ANSWER: Defendants admit that a controversy exists as to the constitutional validity of Public Act 98-599. The remaining allegations in Paragraph 71 consist of legal conclusions that Defendants deny, and to the extent it contains any factual allegations, Defendants deny them.

72. The named Plaintiffs and the members of the ERI subclass have no adequate remedy at law and should Defendants fail to pay Plaintiffs their 3% Automatic Increase, the named Plaintiffs and the members of the class, they will suffer irreparable injury.

ANSWER: Paragraph 72 consists of legal conclusions that Defendants deny, and to the extent it contains any factual allegations, Defendants deny them.

73. This Court should enter a preliminary injunctive relief ordering the establishment of an escrow into which the Defendant will pay the difference between the increases mandated by Public Act 98-599 and the 3% Automatic Increase, *pendente lite*.

ANSWER: Paragraph 73 consists of legal conclusions that Defendants deny, and to the extent it contains any factual allegations, Defendants deny them.

AFFIRMATIVE MATTER IN DEFENSE OF CLAIMS ASSERTED
(Reserved Sovereign Powers)

Pursuant to Section 2-613(d) of the Code of Civil Procedure, Defendants further respond to the Amended Complaint by alleging the following affirmative matter in defense of the claims asserted by the plaintiffs in this suit:

1. All causes of action asserted in the Plaintiffs' Complaint fail to state a claim and are barred because Public Act 98-599 (the "Act") is a permissible exercise of the State of Illinois' reserved sovereign powers (sometimes referred to as the State's police powers). Plaintiffs cannot sustain their burden of establishing that Public Act 98-599 is unconstitutional.

2. Starting around 2000 and continuing through the financial crisis and deep recession that began in 2008, underfunding in the state-funded retirement systems (*i.e.*, asset levels below the actuarially required amounts needed to pay all benefits for services provided by members) contributed significantly to a severe financial crisis for the State that adversely affected the long-term financial soundness of those retirement systems, the cost of financing the State's operations and outstanding debt, and the State's ability to provide critical services to Illinois residents and businesses.

3. From fiscal year 1999 to fiscal year 2013, the unfunded actuarial liability of the four state-funded retirement system affected by Public Act 98-599 (hereinafter the "Systems"), according to the Systems' actuarial reports for those years, increased as follows (rounded to the nearest million dollars):

| | 1999 | 2013 |
|--------|------------------|------------------|
| TRS | \$10,968,000,000 | \$55,732,000,000 |
| SERS | \$2,012,000,000 | \$22,843,000,000 |
| SURS | \$1,855,000,000 | \$20,110,000,000 |
| GARS | \$94,000,000 | \$269,000,000 |
| Total: | \$14,929,000,000 | \$98,954,000,000 |

The causes of this underfunding included, but were not limited to, significant unforeseen and unanticipated events, including, among other things: (1) prolonged and unusually poor investment results and reasonable future investment return expectations due to systemic, severe market downturns, including in the wake of the worst financial crisis since the Great Depression; (2) historically low rates of inflation; (3) significant increases in life expectancy; and (4) other changes in actuarial assumptions. These events not only increased significantly the Systems' unfunded actuarial liabilities, but also led to substantial reductions in the State's revenues available to make contributions to the Systems and for other expenditures, including wages, salaries and other benefits for state employees.

4. Although the Systems have been underfunded for many years, their underfunding now greatly exceeds the State's annual budget for all categories of expenditure, including, without limitation, public education, public health and safety, medical coverage for the poor and for current and retired public employees, road construction, repair and maintenance, and all other public services provided by state employees.

5. Before passage of the Act, the Systems' unsustainable and worsening liabilities greatly contributed to higher debt financing costs for the State, which passage of the Act immediately and substantially alleviated. The Systems' unsustainable and worsening pension liabilities, which the Act was intended to address, also contributed to substantial uncertainty in the State's climate for attracting and retaining businesses that provide employment to Illinois residents, contribute to a thriving state economy, and pay taxes that support important public services and provide revenues to fund the Systems. A significant factor contributing to the magnitude of System's liabilities and corresponding underfunding is that the 3% compounded

annual annuity increases, which are not part of the core pension benefit, have in recent years substantially exceeded actual inflation and were not matched with higher employee contributions.

6. Before enacting Public Act 98-599, the General Assembly took multiple other steps to address the State's financial crisis, including the increasingly urgent problem presented by the Systems' underfunding. Those steps included, among other things, enacting a separate program of less generous pension benefits for persons who became system members after 2010 (identified as "Tier II" members); significantly reducing public spending on other programs, including support for public education, Medicaid, health insurance benefits for current and retired state employees, and other social services for Illinois residents; raising income taxes; and deferring billions of dollars in payments owed to state vendors and other creditors. These measures proved insufficient to adequately address the State's financial crisis, and its credit rating continued to suffer, causing it to incur still higher costs to finance its debt, thereby further reducing the revenues that could be devoted to providing critical services to Illinois residents and reducing the Systems' unfunded liabilities.

7. Only after taking these other measures to promote the actuarial soundness of the Systems and address the State's financial crisis resulting from this underfunding problem did the General Assembly pass the Act, which includes a schedule for actuarially prescribed, automatic state contributions to the Systems that will progressively eliminate their underfunding, a mechanism for enforcing those contributions, reductions in contributions to the Systems by their active members, and for persons who became members of the Systems before 2011 (referred to as "Tier I" members), modifications to future pension increases for active and retired members.

8. The pension modifications provided in the Act include prospective reductions in future increases in annual annuity adjustments (often referred to as cost-of-living adjustments, or COLAs) that are designed to have the least impact on members with the lowest salaries on which their pensions are calculated, on members who put in the most years of public service, and on members who retired before July 1, 2014.

9. The pension modifications provided in the Act also include increases in the retirement age at which active members below the age of 46 are entitled to receive a pension. Those increases, up to a maximum of five years, are lowest for the oldest active members and are progressively greater for younger active members.

10. The pension modifications provided in the Act further include a cap on the pensionable salary of active members with a salary presently above about \$110,000, and a change in the method for determining the "effective rate of interest" used to calculate pensions for members under the money-purchase formulas included in Articles 15 and 16 of the Pension Code.

11. In light of the above-described unanticipated exigencies contributing to the Systems' unsound financial condition and the State's related fiscal crisis, the Act represented a reasonable response to these circumstances. In light of the measures already taken by the General Assembly to address the Systems' financial condition and the State's fiscal crisis, and in light of the serious negative effects of other alternatives, the Act's limited changes to pensions were necessary to address these circumstances.

12. The legislative findings in the Act include the following:

a. "Illinois has both atypically large debts and structural budgetary imbalances that will, unless addressed by the General Assembly, lead to even greater and rapidly growing debts and deficits. Already, Illinois has the lowest credit rating of any state, and it faces the prospect of future credit downgrades that will further increase the high cost of borrowing."

b. "The State has taken significant action to address these fiscal troubles, including, but not limited to, increasing the income tax and reducing pension benefits for future employees. Further, the State has enacted a series of budgets over the last several fiscal years that resulted in deep cuts to important discretionary programs that are essential to the people of Illinois."

c. "[T]he State's retirement systems have unfunded actuarially accrued liabilities of approximately \$100 billion."

d. "[W]ithout significant pension reform, the unfunded liability and the State's pension contribution will continue to grow, and further burden the fiscal stability of both the State and its retirement systems."

e. "Having considered other alternatives that would not involve changes to the retirement systems, the General Assembly has determined that the fiscal problems facing the State and its retirement systems cannot be solved without making some changes to the structure of the retirement systems. As a result, this amendatory Act requires more fiscal responsibility of the State, while minimizing the impact on current and retired State employees."

13. These legislative findings are reasonable and justified. They confirm and establish that the Act represents a reasonable and necessary means by the General Assembly to achieve an important public purpose.

14. The Act is presumed constitutional. The Act's presumption of constitutionality includes the reasonableness and necessity for its provisions in light of the circumstances faced by the State and the General Assembly when it was enacted.

15. In light of the magnitude of the pension problem and all of the other efforts the State has made to date, the Act represents a valid exercise of the State's reserved sovereign powers to modify contractual rights and obligations, including contractual obligations of the

State established under Article I, Section 16 and Article XII, Section 5 of the Illinois Constitution.

WHEREFORE, Defendants pray for entry of judgment in their favor and against the plaintiffs on all of their claims, and for such further relief as is warranted in the circumstances.

Date: May 15, 2014

Respectfully Submitted,

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

IN RE: PENSION REFORM LITIGATION) No. 2014 MR 1
) Hon. John W. Belz

This document relates to:)

ILLINOIS STATE EMPLOYEES)
ASSOCIATION RETIREES, ROBERT SILGER,)
GWENN KLINGLER, BARBARA SCHOB,)
BARBARA MAXEINER, and JOHN)
MUNDSTOCK, on behalf of a Class of)
Persons Similarly Situated,)

Plaintiffs,)

-vs-)

THE BOARD OF TRUSTEES OF THE)
STATE EMPLOYEES' RETIREMENT SYSTEM)
OF ILLINOIS, THE BOARD OF TRUSTEES OF)
THE GENERAL ASSEMBLY RETIREMENT)
SYSTEM, THE BOARD OF TRUSTEES OF THE)
STATE TEACHERS' RETIREMENT SYSTEM,)
THE BOARD OF TRUSTEES OF THE STATE)
UNIVERSITY RETIREMENT SYSTEM,)
JUDY BAAR TOPINKA, Comptroller of the)
State of Illinois, and DAN RUTHERFORD, the)
Treasurer of the State of Illinois)

Defendants.)


Originally Filed as
Sangamon County Case
Case No. 2014 CH 3

NOTICE OF FILING

To: See attached Certificate of Service

PLEASE TAKE NOTICE that on the 15th day of May, 2014, the attached **ANSWER AND DEFENSES** was filed with the Clerk of the Circuit Court for the Seventh Judicial Circuit, Sangamon County, Illinois, at the Sangamon County Courthouse, 200 South Ninth Street, Springfield, Illinois 62701.

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CERTIFICATE OF SERVICE

I, Joshua Ratz, an attorney, hereby certify that on May 15, 2014, true and correct copies of the foregoing Answer and Defenses were served by email; and United States Mail, first class postage prepaid, upon all counsel of record as follows:

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