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Clerk of the Circuit Court

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

IN RE: PENSION LITIGATION	)	No. 2014 MR 1 Honorable John W. Belz
DORIS HEATON, *et al.*, Plaintiffs, v. PAT QUINN, Governor of Illinois, *et al.*, Defendants.	)	Originally Filed as Cook County Case No. 2013 CH 28406
RETIRED STATE EMPLOYEES ASS'N, *et al.*, Plaintiffs, v. PATRICK QUINN, Governor of Illinois, *et al.*, Defendants.	)	Originally Filed as Sangamon County Case No. 2014 MR 1
ILLINOIS STATE EMPLOYEES ASS'N, *et al.*, Plaintiffs, v. BOARD OF TRUSTEES OF STATE EMPLOYEES RETIREMENT SYSTEM OF ILLINOIS, *et al.*, Defendants.	)	Originally Filed as Sangamon County Case No. 2014 CH 3
GWENDOLYN A. HARRISON, *et al.*, and WE ARE ONE ILLINOIS COALITION, Plaintiffs, v. PATRICK QUINN, Governor of Illinois, *et al.*, Defendants.	)	Originally Filed as Sangamon County Case No. 2014 CH 48
STATE UNIVERSITIES ANNUITANTS ASS'N, *et al.*, Plaintiffs, v. STATE UNIVERSITIES RETIREMENT SYSTEM, *et al.*, Defendants.	)	Originally Filed as Champaign County Case No. 2014 MR 207

MOTION OF WE ARE ONE ILLINOIS COALITION PLAINTIFFS FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Gwendolyn Harrison, *et al.* and We Are One Illinois Coalition (the "Coalition"), by its undersigned counsel and pursuant to 735 ILCS 5/11-101, in addition to any other applicable law, respectfully move this Court for a temporary restraining order and preliminary injunction against

Defendants State of Illinois Governor Patrick Quinn, State of Illinois Comptroller Judy Baar Topinka, State of Illinois Treasurer Dan Rutherford, Teachers' Retirement System of the State of Illinois, Board of Trustees of the Teachers' Retirement System of the State of Illinois, State Employees' Retirement System of Illinois, Board of Trustees of the State Employees' Retirement System of Illinois, State Universities Retirement System of Illinois, and Board of Trustees of the State Universities Retirement System of Illinois. In support of this motion, the Coalition has filed an accompanying memorandum of law which sets forth the factual and legal basis for the relief requested. The Coalition's accompanying memorandum of law is incorporated herein. The Coalition also provides herewith a proposed order. In support of its motion, the Coalition states as follows:

1. Public Act 98-0599 ("Act") violates the State of Illinois Constitution which promises that a public employee's pension is a contract which the State cannot diminish or impair:

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

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

2. The State insists that the Act take effect on June 1, 2014 before a final decision on the Act's constitutionality can be rendered. The Coalition thus turns to the Court for temporary and preliminary injunctive relief that will protect both pension system members and the State itself from harm that will befall them if the Act is permitted to take effect, only to have it subsequently declared unconstitutional.

3. Entry of an injunction is warranted for several reasons. First, Illinois' public employees have a clear right or interest in need of protection. Illinois courts uniformly hold that

a public pension system member has a vested right to receive the pension benefits that existed when she or he entered the system, plus any enhancements subsequently provided under the pension code. *Miller v. Retirement Board of Policeman's Annuity*, 329 Ill. App. 3d 589, 597 (1st Dist. 2001) (the Pension Protection Clause "prohibits subsequent amendments to the law from decreasing a party's pension benefits, but allows pension benefits to be enhanced by a subsequent amendment") (quotation omitted). The Act jeopardizes that right for all Tier I members of the pension systems.

4. Second, the Coalition raises a fair question that the Act violates the Pension Protection Clause and that the Court will likely so hold. The Court need only look at two salient points. The plain and unambiguous Pension Protection Clause is unequivocal in its protection of pension benefits from State diminishment and impairment. Despite that constitutional protection, the Act nevertheless impairs and diminishes those benefits.

5. Third, pension system members will suffer irreparable harm for which there is no adequate remedy at law absent an injunction. The strictures of Public Act 98-0599 necessarily will force decisions to be made and actions to be taken during the pendency of the consolidated lawsuits that cannot be unwound should the Court agree that Public Act 98-0599 violates the Constitution.

6. Fourth, where, as here, a defendant acts in contravention of a plaintiff's rights with knowledge of the consequences that might ensue, no balancing of hardships is warranted. But, even if the Court were to balance the hardships, that balance favors entry of a temporary restraining order and a preliminary injunction for at least three reasons.

- First, pension system members have suffered and will continue to suffer irreparable harm that flows from irrevocable decisions they will make in light of

questions concerning the constitutionality of the diminishment and impairments the Act imposes. That uncertainty can be ameliorated only with a stay of the Act's implementation and, ultimately, by a final ruling on the Act's constitutionality.

- Second, pension system members do not stand alone in suffering harm. Each pension system and the Comptroller and the Treasurer will be forced to expend substantial resources – resources the State complains are scarce – in order bring their operations into compliance with the Act. Of course, that burden and the attendant expense will only multiply if the Act is overturned because Defendants will have to expend substantial additional resources to restore the status quo. Moreover, difficult questions exist about how the pension systems would recoup the 1% reduction in pension contributions for which the Act provides, and how it would address tax ramifications for pension systems members to the extent that the State could collect those contributions in the first place. Of course, if the pension systems ultimately are unable to recoup all or even part of the reductions for which the Act calls, they will be worse off.
- Third, the harm to pension system members and the pension systems will be immediate absent an injunction. In contrast, an injunction would not immediately impact the State's fiscal situation. To the extent that the Act purports to fix pension system funding issues, that fix is implemented over a long term. The State admits in its recent budget projections that no savings are realized from the Act until Fiscal Year 2016, the start of which is more than a year away.

WHEREFORE, for these reasons and the reasons set forth in further detail in the Coalition's supporting memorandum, the Coalition seeks a temporary restraining order and preliminary injunction:

(a) staying the implementation of Public Act 98-0599 in its entirety, and enjoining the State of Illinois and all Defendants from implementing any provisions of Public Act 98-0599 until further order of the Court or until Public Act 98-0599 is held unconstitutional and a permanent injunction is entered; and

(b) granting such further relief as may be just or appropriate.

Dated: May 12, 2014

Respectfully submitted,

GWENDOLYN A. HARRISON, *et al.* and
WE ARE ONE ILLINOIS COALITION

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