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2017-CH-02157

CALENDAR: 03

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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

BD EDUCATION CITY CHICAGO v. RAUNER BRUCE
2017-CH-02157

The transmission was received on 03/24/2017 at 3:26 PM and was ACCEPTED with the Clerk of the Circuit Court of Cook County on 03/24/2017 at 3:35 PM.

MEMORANDUM IN SUPPORT OF MOTION FILED (Defendants' Memorandum in Support of their Motion to Dismiss)

Filer's Email:	mdierkes@atg.state.il.us
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Notice Date:	3/24/2017 3:35:00 PM
Total Pages:	19

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

BOARD OF EDUCATION OF THE CITY OF CHICAGO, *et al.*	)	
Plaintiffs,	)	Case No. 17-CH-02157
v.	)	Hon. Franklin U. Valderrama
BRUCE RAUNER, *et al.*	)	
Defendants.	)	

DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS

INTRODUCTION

Plaintiffs are attempting an end-run around the legislative process. The Board of Education of the City of Chicago and five parents of CPS schoolchildren filed this lawsuit invoking *Brown v. Board of Education*, 347 U.S. 483 (1954), and alleging that the State's "education" funding disparately impacts CPS, which is predominantly minority. But unlike *Brown*, this case is not about racial segregation, nor is it even about education funding. Plaintiffs do not cite, much less challenge, the State's statutory school funding system. And the numbers in plaintiffs' own complaint show that the State provides ***substantially more*** education funding to CPS than other districts: CPS has less than 20% of the State's students but receives 24% of the State's education funding.

Despite their repeated references to "education" funding, plaintiffs are in fact challenging pension funding. Plaintiffs complain that CPS has the "ultimate responsibility" for ensuring that the Chicago Teachers' Pension Fund is adequately funded. They allege that the State has not contributed enough money in recent years to the Chicago Teachers' Pension Fund, and express their displeasure at the Governor's decision in December 2016 to veto a bill that would have provided additional pension funding.

But these are not matters for the judiciary, and the statute that plaintiffs rely on, the Illinois Civil Rights Act of 2003 (ICRA), affords them no basis for relief. Under the Illinois Constitution, the appropriation of State funds is committed to the legislative process, and the Governor has the authority to veto bills. ICRA cannot override the State's pension laws, the legislature's funding decisions, or the Governor's lawful veto. Plaintiffs' claims fail for multiple reasons and should be dismissed.

BACKGROUND

This case is about pension funding. Under state law, CPS has the "ultimate responsibility" for ensuring that the Chicago Teachers' Pension Fund (CTPF) is adequately funded. (Compl. at ¶¶42) By the end of Fiscal Year 2013, despite its pension funding obligation, CPS had a positive general operating fund balance of $949 million. (*Id.* at ¶50) Over the next three years, however, CPS "depleted all of that reserve." (*Id.*) CPS relied on new tax revenues, borrowings, and cost-cutting measures to meet its cash flow requirements, including its pension funding obligations. (*Id.* at ¶51) In its Fiscal Year 2017 budget, CPS assumed that the State would provide additional pension funding, based on Amended Senate Bill 2822, which allocated $215 million for the CTPF. (*Id.* at ¶54) But on December 1, 2016, Governor Rauner vetoed the bill. (*Id.* at ¶¶9-10, 54) On February 6, 2017, CPS proposed amendments to its Fiscal Year 2017 budget "to begin to address the $215 million gap." (*Id.* at ¶55) One week later, CPS filed this lawsuit.

Plaintiffs are the Board of Education of the City of Chicago and parents of children who attend CPS. The have sued Governor Rauner, the State of Illinois, the Illinois State Board of Education (ISBE), ISBE's Chair Reverend James Meeks, ISBE's Superintendent Dr. Tony Smith, and Comptroller Mendoza. Their two-count complaint alleges "disparate funding"

(Count I) and "disparate pension-funding requirements" (Count II) in violation of the Illinois Civil Rights Act of 2003, 740 ILCS 23/5(a)(2). In Count I, plaintiffs allege that CPS, which is predominantly minority, receives 15% of the State's "education" funding despite having 20% of the students (or, put another way, CPS students receive 78 cents for every dollar received by students in the rest of the State). (*Id.* at ¶¶38-39) In Count II, plaintiffs complain that the Illinois Pension Code, 40 ILCS 5/17-129, requires CPS to ensure that CTPF is adequately funded, even though the State "assumes the ultimate responsibility" for funding the Teachers' Retirement System (TRS). (*Id.* at ¶42)

Education Funding

In Illinois, public schools are funded by a combination of federal, state, and local sources. *See Comm. for Educ. Rights v. Edgar*, 174 Ill. 2d 1, 5-7 (1996). State education funding includes General State Aid (GSA), which is determined by a complex formula set forth in the Illinois School Code. 105 ILCS 5/18-8.05(E). The GSA that a district receives depends on its average daily attendance, its available local resources, and the foundation level, which is "a figure established by the State representing the minimum level of per pupil financial support that should be available to provide for the basic education" of each pupil in attendance. *Id.*; 105 ILCS 5/18-8.05(B). Qualifying districts also receive supplemental GSA based on the concentration of low income households within the district. *Id.* at 5/18-8.05(H). The system is designed to ensure that the combination of State aid and required local resources equals or exceeds the foundation level per pupil. *Id.* at 5/18-8.05(A)(1).

In addition to GSA, State education funding includes categorical grants for a variety of specific purposes. *Edgar*, 174 Ill. 2d at 6. In 1995, the Illinois General Assembly passed legislation providing for an annual "block grant" to CPS in lieu of separate funding for each

program that the categorical grants fund for non-CPS schools. 105 ILCS 5/1D-1. CPS receives block grant funding for, among other things, bilingual education, the State lunch and free breakfast program, educational service centers, special education (funding for children requiring services, orphanage, personnel, private tuition, summer school, and transportation), regular and vocational transportation, agriculture education, early childhood education, and truants' optional education. *Id.* CPS's block grant continues to be based on the proportion of funding that CPS received back in 1995, *id.* at 5/1D-1(d), even though the number of students attending CPS has decreased since then.

Plaintiffs' "disparate funding" claim (Count I) is based on their allegation that CPS receives 15% of the State's "education" funding, despite, having nearly 20% of the students. (Compl. at ¶38) Plaintiffs' definition of "education" funding, however, includes not only GSA and the categorical grants/CPS block grant set forth in the Illinois School Code, but also State contributions to the teacher pension funds. (*Id.* at ¶¶36-37) (plaintiffs' charts include line items for projected State contributions to CTPF and TRS)[1] ISBE does not administer the teacher pension funds. 105 ILCS 5/18-7 (State contributions to CTPF and TRS are "appropriated directly" to the funds).

Plaintiffs' allegations show that when pension funding is excluded, CPS receives proportionally more State funding than non-CPS districts. The calculations are simple. Plaintiffs project that for Fiscal Year 2017, CPS will receive $1,734,345,898 and non-CPS districts will receive $9,571,937,253. (Compl. at ¶¶36-37) This includes pension funding, which

[1] This is clear from plaintiffs' complaint. Plaintiffs project that in FY 2017, the combination of major sources of State education funding and State pension contributions will be $1,734,345,898 for CPS and $9,571,937,253 for non-CPS districts. (Compl. ¶¶36-37) Total State funding is the sum of these two figures ($11,306,283,151). When the CPS portion is divided by the total, the result is $1,734,345,898 divided by $11,306,283,151 = 0.15, or 15%. This confirms that plaintiffs' "15%" figure includes pension contributions.

can be subtracted out since plaintiffs provide the expected State pension contributions. Based on plaintiffs' own numbers, when pension funding is excluded, CPS will receive $1,722,159,898 ($1,734,345,898 minus $12,186,000 to CTPF) and non-CPS districts will receive $5,585,353,902 ($9,571,937,253 minus $3,986,583,351 to TRS), for a grand total of $7,307,513,800 received by all school districts in Illinois. To determine the percentage of funding allocated to CPS, one would divide CPS's funding by the grand total: $1,722,159,898 divided by $7,307,513,800 equals 0.24, or 24%. Thus, excluding pension funding, CPS receives 24% of the State's education funding despite having less than 20% of the State's students. (Compl. at ¶38) Put another way, for each dollar that the State spends per student on non-CPS students, the State spends about $1.24 per CPS student.[2]

Pension Funding

The Illinois Pension Code governs the teacher pension funds. Both CTPF and TRS are subject to identical statutory minimum contribution requirements to ensure adequate funding. 40 ILCS 5/17-129(b) (minimum annual contribution to CTPF shall be "sufficient to bring the total assets of the Fund up to 90% of the total actuarial liabilities of the Fund by the end of fiscal year 2045"); 40 ILCS 5/16-158(b-3) (same for TRS). The Board of Education of the City of Chicago is responsible for the minimum contributions to CTPF, and the State is responsible for the minimum contributions to TRS. *Id.*

"For many years" the State contributed to CTPF an annual amount "between 20% and 30%" of its annual contribution to TRS, and the Illinois General Assembly declared that its "goal

[2] This calculation is also straightforward. The ratio of State funding for CPS to State funding for non-CPS districts is $1,722,159,898 divided by $5,585,353,902 = 0.31, meaning that the State spends 31 cents on CPS alone for every dollar that it spends on non-CPS districts. But CPS has one-fourth of the enrollment of non-CPS districts (if CPS has 20% of the students, see Compl. at ¶38, then non-CPS districts have 80%), so on a per-student basis, CPS students receive $1.24 (31 cents times 4) for every dollar spent on non-CPS students.

and intention" was to continue this level of funding. 40 ILCS 5/17-127. By statute, the State contributes 0.544% of CTPF's total teacher payroll to the fund in years when CTPF is less than 90% funded. 40 ILCS 5/17-127. While the State is not required to contribute to CTPF beyond this amount, it may do so, and "[a]ny contribution" by the State acts as a credit against the Board's required contribution. 40 ILCS 5/17-129(b)(v).

Plaintiffs' "disparate pension-funding requirements" claim (Count II) purports to bring a challenge under ICRA to Section 5/17-129 of the Pension Code to the extent that it gives CPS the "ultimate responsibility for ensuring that CTPF is adequately funded." (Compl. at ¶42) Plaintiffs complain that in recent years, the State has not provided significant funding for CTPF, calling the State's contributions in recent years "meagre." (*Id.* at ¶43) Senate Bill 5 would amend the Pension Code to mandate certain State contributions to CTPF, but the bill remains pending and has not been passed by the House or Senate.

ARGUMENT

Plaintiffs do not assert any constitutional claims, nor do they allege intentional discrimination by any of the defendants. Their two-count complaint purports to state disparate impact claims under the Illinois Civil Rights Act of 2003 (ICRA). The Illinois General Assembly enacted ICRA in response to the United States State Court's decision in *Alexander v. Sandoval*, 532 U.S. 275 (2001), which held that there is no private right of action to enforce the disparate-impact regulations promulgated pursuant to Title VI of the Civil Rights Act. ICRA "merely created a new venue" for plaintiffs to pursue such a disparate-impact claim; the statute was "was not intended to create new rights." *Ill. Native Am. Bar Ass'n v. Univ. of Ill.*, 368 Ill. App. 3d 321, 327 (1st Dist. 2006).

ICRA applies to "units" of state, county, or local government, and prohibits them from utilizing "criteria or methods of administration" that "have the effect of subjecting individuals to discrimination because of their race, color, national origin or gender." 740 ILCS 23/5(a)(2). To state an ICRA claim, it is not enough to simply allege a bottom-line disparate impact or a "generalized policy" that leads to such an impact. *Swan v. Bd. of Educ. of City of Chicago*, 2013 WL 4401439, at *19 (N.D. Ill. Aug. 15, 2013), *citing Puffer v. Allstate Ins. Co.*, 675 F.3d 709, 717 (7th Cir. 2012). Instead, plaintiffs must isolate and identify specific policies or practices of a "unit" of government that allegedly cause a disparate impact. *Id.*; *see also Coal. for Safe Chicago Communities v. Vill. of Riverdale*, 2016 WL 1077293, at *12-13 (Ill. Cir. Ct. Feb. 25, 2016) (dismissing ICRA claim for failure to challenge "an identifiable, facially-neutral policy" utilized by the defendants).

Here, plaintiffs have not pled a cognizable ICRA claim. Plaintiffs' complaint details CPS's financial issues, but does not trace them to any specific policy or practice, much less a policy or practice that may be challenged through an ICRA claim. Plaintiffs' claims fail for multiple reasons, including sovereign immunity, separation of powers, and irremediable pleading deficiencies, and should be dismissed, with prejudice, pursuant to 735 ILCS 5/2-619 and 735 ILCS 5/2-615, for the reasons set forth below.

MOTION PURSUANT TO SECTION 2-619

I. PLAINTIFFS' CLAIMS AGAINST THE STATE OF ILLINOIS, THE GOVERNOR, AND THE COMPTROLLER SHOULD BE DISMISSED BASED ON SOVEREIGN IMMUNITY.

Plaintiffs' claims against the State are barred by sovereign immunity and ICRA's plain language. In *Chicago Urban League v. State of Illinois*, the plaintiffs sued the State, alleging that the school funding system violated ICRA. The Court dismissed the ICRA claims against the

State, holding that ICRA "does not provide an explicit waiver of the State's sovereign immunity" and, therefore, "***the State cannot be made a party to a Civil Rights Act claim under the doctrine of sovereign immunity***." *Chicago Urban League v. State of Ill.*, 2009 WL 1632604, at*11 (Cir. Ct. Ill. Apr. 15, 2009) (emphasis added). The holding in *Chicago Urban League* is based on well-established law and supports dismissal here.

In general, the State is immune from suit. The State Lawsuit Immunity Act provides that "the State of Illinois should not be made a defendant or party in any court," 745 ILCS 5/1, subject to certain exceptions (not including ICRA). *Id.*; *see also Smith v. Jones*, 113 Ill. 2d 126, 132 (1986) ("Of course, because of sovereign immunity the State or a department of the State can never be a proper party defendant in an action brought directly in the circuit court."). While the State may waive its sovereign immunity, it is well-established that such waivers must be "clear and unequivocal" or "affirmatively declared." *People ex rel. Madigan v. Excavating & Lowboy Services, Inc.*, 388 Ill. App. 3d 554, 563-64 (1st Dist. 2009). For example, the Illinois Public Labor Relations Act expressly states that "the State of Illinois waives sovereign immunity." 5 ILCS 315/25.

There is no such waiver here. Unlike the Public Labor Relations Act (for example), ICRA does *not* clearly and unequivocally waive the State's immunity from suit.[3] By its own terms, ICRA only permits claims against "***unit[s]*** of State, county, or local government in Illinois." 740 ILCS 23/5(a) (emphasis added). The State itself is not a "unit" of State

[3] In this important respect, ICRA differs from Title VI, which explicitly abrogated the states' immunity from suit in federal court. *See* 42 U.S.C. § 2000d-7(a)(1) ("A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of … title VI of the Civil Rights Act of 1964 [42 U.S.C.A. § 2000d et seq.], or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance."). Title VI is Spending Clause legislation, which is contractual in nature: "in return for federal funds, the recipients agree to comply with federally imposed conditions." *Barnes v. Gorman*, 536 U.S. 181, 185-86 (2002). No such bargain exists with respect to ICRA.

government, and therefore not a proper defendant. *See, e.g.*, *In re Special Educ. of Walker*, 131 Ill. 2d 300, 307 (1989) (holding that inclusion of the term "any other governmental entity" did not waive the State's sovereign immunity). "Had the legislature intended to impose liability upon the State, it would have followed its pattern of using explicit language of waiver and it would have expressly referred to the State." *Id.* Because it did not do so, plaintiffs' claims against the State are barred and should be dismissed.

For the same reasons, plaintiffs' claims against the Governor and Comptroller should be dismissed. The Governor and Comptroller are not akin to state agencies. They are not "units" of State government, as plaintiffs erroneously allege. (Compl. at ¶¶27, 23) Instead, they are two of the six elected constitutional officers of the Executive Branch. *See* Ill. Const., art. V, § 1. The Governor exercises the "supreme executive power" of the State of Illinois, and the Comptroller maintains the State's fiscal accounts. Ill. Const., art. V, §§ 8, 17. When they are acting in their official capacities, as plaintiffs assert, they are "the State," and as such are entitled to sovereign immunity. *See Smith*, 113 Ill. 2d at 131 ("[T]he State's immunity cannot be evaded by naming an official or agent of the State as the nominal party defendant."); *Sass v. Kramer*, 72 Ill. 2d 485, 491-92 (1978) (holding that claim against the Secretary of Transportation was tantamount to claim against the State).

MOTION PURSUANT TO SECTION 2-615

II. PLAINTIFFS' CLAIMS AGAINST THE ISBE DEFENDANTS SHOULD BE DISMISSED BECAUSE ISBE DOES NOT ADMINISTER OR DISBURSE PENSION FUNDING.

Plaintiffs' claims against ISBE, Chairman Meeks, and Superintendent Smith (collectively, "ISBE") also should be dismissed. Plaintiffs do not trace their alleged injury to

any "criteria" or "methods of administration" utilized by ISBE, nor can they, because ISBE does not administer or disburse pension funding for TRS or CTPF.

Plaintiffs' "disparate funding" claim (Count I) is based on plaintiffs' much-repeated allegation that CPS receives 15% of the State's "education" funding despite having 20% of the students. (Compl. at ¶60) But, critically, this figure includes pension funding,[4] which ISBE does *not* administer or disburse. *See* 105 ILCS 5/18-7 (State contributions to CTPF "appropriated directly to the Fund" since FY 1999 and State contributions to TRS "appropriated directly to the System" since FY 1996). Based on numbers taken directly from plaintiffs' own complaint, when pensions are excluded, CPS receives ***significantly more*** funding from the State than other school districts in Illinois. *See* Background Section, *supra*. CPS has less than 20% of the students in the State, but receives 24% of the State's educational funding. *Id.* Put another way, for every dollar received by a non-CPS student, CPS students receive about $1.24 in State educational funding. *Id.*

The Court should not misunderstand plaintiffs' decision to conflate educational funding (which ISBE administers and disburses) and pension funding (which it does not). Plaintiffs cannot dispute that their "disparate funding" claim hinges on pension contributions, and they have not alleged—and cannot allege—that ISBE plays any role with respect to such contributions. Because plaintiffs have not traced their alleged injury to "criteria" or "methods of administration" utilized by ISBE, they have not stated an ICRA claim against ISBE. *See* 740 ILCS 23/5(a)(2). Nor do plaintiffs have standing to pursue a claim against ISBE. *See Chicago Teachers Union, Local 1 v. Bd. of Educ. of City of Chicago*, 189 Ill. 2d 200, 207 (2000) (standing

[4] For further discussion of this point, see the Background Section of this brief. *See also* Compl. at ¶¶36-37 (sources of funding considered in plaintiffs' calculation include "State Contribution for Pensions to CTPF" and "State Contributions for Pensions to TRS").

requires an injury "fairly traceable to defendant's actions" and "substantially likely to be prevented or redressed by the grant of the required relief").

Plaintiffs cannot fix these deficiencies. Even if plaintiffs had alleged "disparate funding" based on the educational funding that ISBE *does* administer and disburse (something plaintiffs have not done, and cannot do in good faith, because their own allegations show that that when pensions are excluded, CPS receives more money per student than other districts),[5] they still would not state an ICRA claim against ISBE. The amount of educational funding that ISBE distributes to CPS each year is not within ISBE's discretion, but instead is determined by statute and legislative appropriations. *See* 105 ILCS 5/18-8.05 (General State Aid); 105 ILCS 5/1D-1 (block grants for CPS). ISBE cannot be held liable under ICRA for merely following the State's statutory school funding mandates.

Munguia v. State of Illinois is on-point. There, the plaintiffs brought an ICRA claim alleging that the State's transportation funding system disparately impacted minorities by favoring suburban mass transit over urban mass transit. 2010 WL 3172740, at *7 (N.D. Ill. Aug. 11, 2010). The RTA argued that it could not be held liable for carrying out the State's statutory funding mandate, and the court agreed. *Id.* ("The RTA correctly points out that it cannot be held liable under the ICRA for its actions in following the funding mandates of the RTA Act."). While ICRA may reach an agency's "discretionary actions," it does not apply to "actions taken to fulfil a statutory mandate." *Id.* This is consistent with ICRA's plain language: ICRA applies to "criteria" and "methods of administration," not to conduct mandated by statute. It is also

[5] Plaintiffs do not challenge the educational funding system administered by ISBE. Their lengthy complaint does not even cite the statutory provisions setting out the formula for calculating General State Aid (GSA) or providing for special block grant funding to CPS. *See* 105 ILCS 5/18-8.05 (GSA formula); 105 ILCS 5/1D-1 (block grant). The complaint has only one allegation that excludes pension funding, and it considers *local* revenues over which ISBE has no control. (Compl. at ¶47) Moreover, the Illinois Supreme Court has upheld the school funding system's partial reliance on local resources. *See Comm. for Educ. Rights v. Edgar*, 174 Ill. 2d 1, 33-40 (1996).

consistent with ICRA's limitation to "units" of government: the State is immune from ICRA claims, and plaintiffs cannot circumvent the State's sovereign immunity by suing ISBE for implementing the State's funding system.

Moreover, any challenge to the State's school funding system would be foreclosed by the Illinois Supreme Court's decision in *Committee for Educational Rights v. Edgar*, 174 Ill. 2d 1 (1996). In *Edgar*, the Court held that objections to the school funding system "must be presented to the General Assembly," that "the process of reform must be undertaken in a legislative forum rather than in the courts, " and that "questions relating to the quality of education are solely for the legislative branch to answer." *Id.* at 24, 39-40. The legislature could never have intended for ICRA to overturn over a century of jurisprudence holding that policy decisions regarding educational funding, quality, or opportunity require consideration of factors within the sole purview of the legislative branch. *Id.* at 23-24, 39-40.

Plaintiffs' "disparate pension-funding requirements" claim (Count II) is equally problematic. In this claim, rather than focusing on the *amount* of pension funding that the State contributes to CTPF versus TRS, plaintiffs purport to challenge the Illinois Pension Code itself, to the extent that it "imposes on CPS the ultimate responsibility for ensuring that CTPF is adequately funded." (Compl. at ¶42) But plaintiffs do not, and cannot, allege that ISBE enacted or enforces the pension statute that they challenge. Again, ISBE does not distribute State contributions for the TRS and CPTF pension funds. *See* 105 ILCS 5/18-7. Plaintiffs' claim in Count II does not allege an injury stemming from "criteria" or "methods of administration" utilized by ISBE, and should be dismissed.

III. PLAINTIFFS' CLAIMS AGAINST GOVERNOR RAUNER ARE BARRED BY SEPARATION OF POWERS PRINCIPLES.

Plaintiffs' claims against Governor Rauner should be dismissed as well. Regarding the Governor, plaintiffs allege only that in December 2016, he vetoed Amended Senate Bill 2822, which would have provided an additional State contribution of $215 million to assist CPS in meeting its pension obligations. (Compl. at ¶¶9-10, 51-52) But plaintiffs cannot challenge the Governor's veto through their ICRA disparate impact claim. The Governor's decision to veto a particular bill is not a "criteria or method of administration" subject to ICRA, 740 ILCS 23/5(a)(2), and it is beyond the pale to suggest that ICRA was ever intended to allow the courts to override the Governor's exercise of his veto authority. The Illinois Constitution expressly grants the Governor authority to veto bills, including appropriations bills, Ill. Const. art. IV, § 9, and it would violate the separation of powers doctrine for the legislature to deprive or limit the Governor's veto authority through a state statute such as ICRA. *See* Ill. Const. Art. II, § 1; *Ex Parte Perry*, 483 S.W.3d 884, 901 (Tex. Crim. App. 2016) ("The Legislature cannot directly or indirectly limit the governor's veto power.").

The Governor's veto cannot be challenged in this Court, especially through an ICRA disparate impact claim. "[S]tate courts of last resort have held that the governor's veto power is absolute if it is exercised in compliance with the state constitution and that courts may not examine the motives behind a veto or second-guess the validity of a veto." *Id.*, *citing Johnson v. Carlson*, 507 N.W.2d 232, 235 (Minn. 1993) ("It is not for this court to judge the wisdom of a veto, or the motives behind it, so long as the veto meets the constitutional test."); *Barnes v. Sec'y of Admin.*, 586 N.E.2d 958, 960-62 (Mass. 1992) ("We have never inquired into a Governor's motives in the use of the line item veto power."); *see also O'Hara v. Kovens*, 606 A.2d 286, 289-95 (Md. App. 1992) (holding that separation of powers principles barred challenge to governor's

veto). While courts may determine whether a veto complied with constitutional procedures or otherwise violated the constitution, *Jorgensen v. Blagojevich*, 211 Ill. 2d 286 (2004), plaintiffs here do not challenge the Governor's veto on either of these fronts. Their claims against the Governor fail and should be dismissed.

IV. PLAINTIFFS HAVE NOT STATED A CLAIM AGAINST COMPTROLLER MENDOZA.

Plaintiffs' claims against Comptroller Mendoza fail too. Plaintiffs allege only that the Comptroller is responsible for "maintaining the State's fiscal accounts and ordering payments into and out of State funds" (Compl. at ¶32), and this single allegation does not come close to stating an ICRA claim. While plaintiffs claim generally that CPS is underfunded, the Comptroller may not disburse funds absent a legislative appropriation or other expenditure authority. *See* 15 ILCS 405/9(c); *Bd. of Trustees of Cmty. Coll. Dist. No. 508 v. Burris*, 118 Ill. 2d 465, 479 (1987). Conversely, the Comptroller cannot be held liable under ICRA merely for fulfilling her statutory obligation to order payment of funds that are appropriated by the legislature. *See* 15 ILCS 405/2; 40 ILCS 5/16-158 (b-1) (requiring the Comptroller to pay vouchers for State contributions to TRS); *Munguia*, 2010 WL 3172740, at *7 (holding that ICRA applies only to "discretionary actions" and dismissing an ICRA claim challenging an agency's conduct in accordance with a "statutory mandate"). Plaintiffs have not stated a valid ICRA claim against the Comptroller.[6]

[6] To the extent that plaintiffs have named the Comptroller only to effectuate any relief they might obtain, the claims against her still should be dismissed. *See U.S. v. Third Nat'l Bank in Nashville*, 36 F.R.D. 7, 11 (M.D. Tenn. 1964) ("[I]f it is necessary to have the Comptroller before the Court in order to effectuate relief or provide an adequate remedy, he can be made a party to the action when and if that contingency arises.").

V. PLAINTIFFS' CLAIMS AGAINST ALL DEFENDANTS SHOULD BE DISMISSED BECAUSE ICRA CANNOT OVERRIDE THE LEGISLATURE'S FUNDING DECISIONS OR THE STATE'S PENSION LAWS.

Because plaintiffs have not stated a claim against *any* of the six named defendants, this Court can dismiss their complaint without further analysis. But a deeper look at plaintiffs' claims reveals only additional reasons for dismissal.

A. Plaintiffs' "Disparate Funding" Claim Should Be Dismissed.

First, plaintiffs' "disparate funding" (Count I) claim should be dismissed. It is important to be clear about what plaintiffs are, and are not, alleging here. Count I is based on plaintiffs' allegation that CPS receives 15% of the State's "education" funding while having nearly 20% of the students. (Compl. at ¶¶38, 60) But, again, as part of "education" funding, plaintiffs have included the State's contributions to the CTPF and TRS pension funds (*id.* at ¶¶36-37), and this pension funding drives plaintiffs' claim. *See* Background Section, *supra*. This case is not about "education" funding, but rather about teacher pension funding. *Id.*

Properly understood, plaintiffs' "disparate funding" (Count I) claim seeks to override the legislature's decisions about how much pension funding to appropriate for CTPF. This is improper for multiple reasons. To start, the legislature's funding decisions cannot be considered "criteria" or "methods of administration" subject to ICRA. *See Swan*, 2013 WL 4401439, at *19 (holding that a school board's consideration of "underutilization" in determining which schools to close was not a specific policy or practice that could support an ICRA claim). The amount that the legislature appropriates for CTPF each year is the end-product of a multitude of competing considerations by different legislators, with different constituencies, with different interests. Rather than challenging a specific policy or practice, as required to state an ICRA

claim, plaintiffs rely on a "bottom line" theory of disparate impact that the courts have rejected. *See Swan*, 2013 WL 4401439, at *19.

In addition, plaintiffs' claim should be dismissed based on separation of powers principles. As the Illinois Supreme Court explained, "[t]he power to appropriate for the expenditure of public funds is vested exclusively in the General Assembly; no other branch of government holds such power." *State (CMS) v. AFSCME*, 2016 IL 118422, ¶42 (2016); citing Ill. Const., art. VIII, § 2(b). Plaintiffs do not assert any constitutional claims, nor do they identify a clear statutory funding mandate for State contributions to CTPF. Any relief ordered by this Court would run afoul of the separation of powers doctrine by impermissibly interfering with the legislature's exclusive authority to appropriate funds. *See* Ill. Const., art. II, § 1 ("The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to the other."); *AFSCME v. Netsch*, 216 Ill. App. 3d 566, 568 (Ill. App. 4th Dist. 1991) (holding that the issuance of funds in the absence of an appropriations bill "would create obvious problems under the separation-of-powers-doctrine"). Defendants are aware of no case in which a court has held that the legislature's funding decisions are subject to, and can be overridden by, an ICRA disparate impact claim.

B. Plaintiffs' "Disparate Pension-Funding Requirements" Claim Should Be Dismissed.

Second, plaintiffs' "disparate pension-funding requirements" (Count II) claim should be dismissed. Plaintiffs "want to be unmistakably clear that they are not asking this Court to limit or alter the rights of the Chicago Teachers' Pension Fund or the Teachers' Retirement System." (Compl. at ¶17) But at the same time, they complain that under state law, CPS has "the ultimate responsibility for ensuring that CTPF is adequately funded," while the State "assumes the ultimate responsibility for funding TRS." (Compl. at ¶42; *see also* 40 ILCS 5/17-129 (CTPF)

and 40 ILCS 5/16-158 (TRS)) In other words, plaintiffs purport to challenge the Illinois Pension Code itself, to the extent that it does not *mandate* that the State provide contributions to CTPF sufficient to ensure adequate funding. In essence, plaintiffs seek a court order compelling the legislature to rewrite the Pension Code, 40 ILCS 5/17-129, such that it guarantees a certain amount of State funding to the CTPF.

Plaintiffs' claim fails at the outset because an ICRA claim cannot be based on the *absence* of a specific policy or procedure. Plaintiffs' ICRA claim is premised on what they believe is missing from the Illinois Pension Code: a provision mandating that the State assume primary responsibility for funding CTPF. But this cannot state a claim. In *Coalition for Safe Chicago Communities*, the plaintiffs sued two villages, alleging that they violated ICRA by failing to adequately regulate and license firearms, thus causing a disparate impact on minorities. 2016 WL 1077293, at *1. The court dismissed the claim, holding that the plaintiffs had not identified "criteria or methods of administration" that could support an ICRA claim. *Id.* at *13 ("[T]he Court finds that Plaintiffs impermissibly rely upon Defendants' lack of identifiable policies, practices, criteria or methods of administration to support their claim under ICRA."). The same is true here.

More fundamentally, ICRA cannot override the Illinois Pension Code. Plaintiffs have not asserted a constitutional claim. They have asserted an ICRA claim, and ICRA does not trump other state statutes. The proper inquiry is whether ICRA and the Pension Code irreconcilably conflict. *Ill. Native Am. Bar Ass'n*, 368 Ill. App. 3d 321, 326-27 (1st Dist. 2006). "In order for two statutes to be in irreconcilable conflict, they must relate to the same subject matter." *Id.* at 328. In determining whether there is a conflict, "legislative intent is the paramount consideration." *Id.* at 326. Courts "presume the legislature envisions a consistent body of law

when it enacts new legislation," and also "presume the legislature is aware of all previous enactments when it enacts new legislation." *Id.* at 327-28.

Here, there is no conflict between ICRA and the Illinois Pension Code. Needless to say, ICRA and the Pension Code do not relate to the same subject matter at all. And there is no indication that the legislature intended for ICRA to supersede the Pension Code. As plaintiffs recognize, Section 5/17-129 expressly requires the CPS to make sufficient contributions to CTPF to ensure adequate funding. *See* 40 ILCS 5/17-129.[7] The legislature is presumed to have been aware of this provision when it enacted ICRA, and still let it stand, which shows that there is no conflict here. *See Ill. Native Am. Bar Ass'n*, 368 Ill. App. 3d at 328 (finding no conflict between ICRA and the University of Illinois Act); *Munguia*, 2010 WL 3172740, at *7 (finding no conflict between ICRA and the RTA Act). This interpretation is "particularly difficult to argue against" because the legislature amended Section 5/17-129 in 2010, more than six years after the passage of ICRA, without mentioning any conflict. *Munguia*, *id.* at *7.

Finally, even if there were a conflict, Section 5/17-129 would take precedence. ICRA was enacted in 2003, while Section 5/17-129's "present mandate" relating to CPS's obligation to fund the CTPF was established in 2010. (Compl. at ¶42) As the more-specific and later-passed statute, the Pension Code would govern. *See Munguia*, 2010 WL 3172740, at *7 ("Even if the statutes could conflict, the 2008 RTA Act amendments were both later in time and more specific, so they would govern over ICRA.").

[7] Further, Section 5/17-127 of the Pension Code announces that the State's "goal and intention" is to contribute to CTPF between 20% and 30% of the amount it contributes to TRS. *See* 40 ILCS 5/17-127. This aspirational language confirms that the legislature did not intend to *guarantee* State contributions to CTPF in a specific amount.

CONCLUSION

For the foregoing reasons, plaintiffs' complaint should be dismissed with prejudice pursuant to 735 ILCS 5/2-619 and 735 ILCS 5/2-615.

Dated: March 24, 2017

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Respectfully submitted,

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Chancery DIVISION

Litigant List

Printed on 03/24/2017

Case Number: 2017-CH-02157

Plaintiffs

Plaintiffs Name	Plaintiffs Address	State	Zip	Unit #
BD EDUCATION CITY CHICAGO			0000	
GOSA MARLON			0000	
RUSSELL LISA			0000	
TAYLOR WANDA			0000	
VALENTIN VANESSA			0000	
VAZQUEZ JUDY			0000	

Total Plaintiffs: **6**

Defendants

Defendant Name	Defendant Address	State	Unit #	Service By
RAUNER BRUCE		0000		
STATE ILLINOIS		0000		
IL STATE BD EDUCATION		0000		
MEEKS REV JAMES		0000		
SMITH DR TONY		0000		
MEMDOZA SUSANA		0000		

Total Defendants: **6**