

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

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

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This document relates to:	)	
	)	
DORIS HEATON, PAMELA KELLER,	)	
KENNETH LEE, HATTIE DOYLE, JOHN	)	
SAWYER III, Ed.D., LANCE LANDECK,	)	
KYLE THOMPSON, and MICHAEL	)	
SCHIFFMAN, on behalf of themselves and a	)	
class of similarly situated persons,	)	
Plaintiffs,	)	Originally Filed as
v.	)	Cook County Case No.
PAT QUINN, Governor of the State of	)	2013 CH 28406
Illinois, in his official capacity, JUDY BAAR	)	
TOPINKA, Comptroller of the State of Illinois,	)	
in her official capacity, and THE BOARD	)	
OF TRUSTEES OF THE TEACHERS'	)	
RETIREMENT SYSTEM OF THE	)	
STATE OF ILLINOIS,	)	
Defendants.	)	

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**ANSWER AND DEFENSES**

Defendants Patrick Quinn, in his official capacity as Governor of the State of Illinois, Judy Baar Topinka, in her official capacity as the Comptroller of the State of Illinois, and the Board of Trustees of the Teachers' Retirement System of the State of Illinois (collectively "Defendants") for their answer to the Amended Complaint filed by Plaintiffs Doris Heaton, *et al.*, state as follows:

1. The Constitution of the State of Illinois contains a guarantee relied upon by many thousands of active and retired teachers and school administrators for more than four decades. That guarantee, perhaps more so than anything else in the Illinois Constitution, was used by countless families across Illinois to plan careers, retirements and financial futures. When teachers and school administrators decided to continue educating Illinois children instead of transitioning to careers in the private sector or working elsewhere, when they decided where to send their children to college, and when they decided when and how to retire, they relied upon that guarantee. Many of them can recite that constitutional guarantee by heart. Its words are

clear and simple:

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.

*See* Constitution of the State of Illinois, Art. XIII, § 5. This guarantee, which the people of Illinois ratified over four decades ago, has never been amended. The guarantee is commonly known as the Pension Protection Clause of the Illinois Constitution.

**ANSWER:** Defendants admit that Article XIII, Section 5 of the Illinois Constitution contains the language quoted in Paragraph 1 of the Amended Complaint. Defendants also admit that Article XIII, Section 5 has never been amended and is sometimes referred to as the Pension Protection Clause. Defendants deny the remaining allegations in Paragraph 1.

2. The framers of the Illinois Constitution left unmistakable evidence of their intent in drafting the Pension Protection Clause. The delegates to the Illinois Constitutional Convention debated whether to include this guarantee on July 21, 1970. Its sponsor, Delegate Henry Green, explained that “in Illinois today we have public employees who are beginning to lose faith in the ability of the state and its political subdivisions to meet these benefit payments.” Green added that, as of 1970, the unfunded accrued liabilities of public sector pension plans in Illinois had reached almost \$2.5 billion, and he added that “the General Assembly has failed to meet its commitments to finance the pension obligations on a sound basis.” Green said that the Pension Protection Clause would “guarantee” pension rights and “direct the General Assembly to take the necessary steps to fund the pension obligations.”

**ANSWER:** Defendants admit that the delegates to the Illinois Constitutional Convention debated whether to include the Pension Protection Clause on July 21, 1970. Defendants further admit that Paragraph 2 accurately quotes selected excerpts of statements by Delegate Green. Defendants deny the remaining allegations in Paragraph 2.

3. Green said to his fellow delegates, “I believe we have at least put the General Assembly on notice that these memberships are enforceable contracts and that they shall not be diminished or impaired.”

**ANSWER:** Defendants admit that Paragraph 3 accurately quotes selected excerpts of statements by Delegate Green.

4. Green's sentiments were echoed by Delegate Helen Kinney, a co-sponsor of the Pension Protection Clause, who explained: "All we are seeking to do is to guarantee that people will have the rights that were in force at the time they entered into the agreement to become an employee, and . . . if the benefits are \$100 a month in 1971, they should be not less than \$100 a month in 1990."

**ANSWER:** Defendants admit that Paragraph 4 accurately quotes selected excerpts of statements by Delegate Green. Defendants deny the remaining allegations in Paragraph 4.

5. In the ensuing debate, Delegate James Kemp added the following:

"[C]ivil service employees who retired never had their pension altered or amended, even during those trying times during the days of the Depression. . . . I would presume that the purpose of this proposal is to make certain that *irrespective of the financial condition of a municipality or even the state government*, that those persons who have worked for often substandard wages over a long period of time could at least expect to live in some kind of dignity during their golden years . . ." (emphasis added).

**ANSWER:** Defendants admit that the allegations in Paragraph 5 accurately quotes selected excerpts of statements by Delegate Kemp.

6. The Pension Protection Clause was approved by the Constitutional Convention and ratified by the people of Illinois.

**ANSWER:** Defendants admit the Pension Protection Clause was part of the Constitution approved by the Constitutional Convention and ratified by the people of Illinois.

7. Over the years, the Illinois Supreme Court has had several occasions to interpret the Pension Protection Clause. The Illinois Supreme Court's decisions have been consistent: "[T]his court has consistently invalidated amendments to the Pension Code where the result is to diminish benefits." *McNamee v. State*, 173 Ill. 2d 433, 445 (1996). That is because, under the Pension Protection Clause, the "contractual relationship" between a retirement system member and the State of Illinois is "governed by the actual terms of the Pension Code at the time the employee becomes a member of the pension system." *McNamee*, 173 Ill. 2d at 439.

**ANSWER:** Paragraph 7 contains legal conclusions and therefore requires no answer.

8. In a strikingly similar context, the Illinois Supreme Court also has warned: "No principle of law permits us to suspend constitutional requirements for economic reasons, no matter how compelling those reasons may seem." *Jorgensen v. Blagojevich*, 211 Ill. 2d 286, 316 (2004).

**ANSWER:** Defendants deny the allegations in Paragraph 8.

9. The guarantee on which so many relied has been violated. On December 3, 2013, the General Assembly passed, and on December 5, 2013, Governor Pat Quinn signed into law, a “reform” of the Illinois pension system. That legislation was known as Senate Bill 1 and now is Public Act 98-0599. It is not true reform. It is an unapologetic violation of the Pension Protection Clause of the Illinois Constitution. Public Act 98-0599 directly diminishes and impairs the benefits of membership in a retirement system of the State.

**ANSWER:** Defendants admit that the General Assembly passed Senate Bill 1 on December 3, 2013 and that Governor Pat Quinn signed Senate Bill 1 into law on December 5, 2013. Defendants further admit that Senate Bill 1 is now known as Public Act 98-0599. Defendants deny the remaining allegations in Paragraph 9.

10. Public Act 98-0599 amends the Illinois Pension Code so as to diminish pre-existing pension rights in at least three significant ways.

**ANSWER:** Defendants deny the allegations in Paragraph 10.

11. First, Public Act 98-0599 changes the formula used to calculate the automatic annual increases in pension annuities, so as to lessen the pension annuities that retirees currently receive and those that current employees had been promised. Those automatic annual increases are commonly referred to as “cost of living adjustments,” or “COLAs,” and will be referred to as such in this Amended Complaint for ease of reference.

**ANSWER:** Defendants admit that the automatic annual increases are commonly referred to as “cost of living adjustments,” or “COLAs.” 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 before the Act were extended to persons who had already retired and ceased making any contributions to their retirement system. Defendants deny the remaining allegations in Paragraph

11.

12. More specifically, Public Act 98-0599 adds new language to the Pension Code which provides that, on or after the Act's effective date, COLAs "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 . . . ." (*See, e.g.*, the Act's amendment to 40 ILCS 5/16-133.1.) Prior to Public Act 98-0599, the Pension Code provided for COLAs of 3% compounded annually. (*See id.*)

**ANSWER:** Defendants admit that Paragraph 12 accurately describes pre-Public Act 98-599 provisions of the pension code and accurately quotes the new language added to the Pension Code by Public Act 98-599. Defendants deny the remaining allegations in Paragraph 12.

13. Public Act 98-0599 also provides that State retirement system members who have not begun to receive a retirement annuity before July 1, 2014, will receive no COLA at all on alternating years for varying lengths of time, depending on their age. (*See, e.g.*, the Act's amendment to 40 ILCS 5/16-133.1.)

**ANSWER:** Defendants admit that the allegations in Paragraph 13 accurately describe the referenced provisions of the Act.

14. Second, Public Act 98-0599 raises the retirement age for members of certain State retirement systems on a sliding scale based upon one's age. (*See, e.g.*, the Act's amendment to 40 ILCS 5/16-132.) The retirement age of someone who is 45 years old on June 1, 2014, is raised by 4 months. On the other end of the spectrum, someone who is younger than 32 on June 1, 2014, will see his or her retirement age increase by 5 years. (*See id.*)

**ANSWER:** Defendants admit that Public Act 98-0599 raises the retirement age (the age after which a member is eligible for a retirement annuity) for some members of certain State retirement systems on a sliding scale based upon the member's age. Defendants further admit that that the retirement age of someone who is 45 years old on June 1, 2014 would be raised by four months under Public Act 98-0599. Defendants also admit that the retirement age of someone who is younger than 32 on June 1, 2014 would increase by five years under Public Act 98-0599. Defendants deny the remaining allegations in Paragraph 14.

15. Third, Public Act 98-0599 imposes a new cap on the pensionable salary of members of certain State retirement systems. (*See, e.g.*, the Act's amendment to 40 ILCS 5/16-

121.) That cap is the greater of: (a) the salary cap that previously applied only to members who joined the retirement system on or after January 1, 2011; (b) the member's annualized salary as of June 1, 2014; or (c) the member's annualized salary immediately preceding the expiration, renewal, or amendment of an employment contract or collective bargaining agreement in effect on June 1, 2014. (*See id.*)

**ANSWER:** Defendants admit that Paragraph 15 accurately describes some of the provisions in Public Act 98-599 relating to its new cap on the pensionable salary of members of certain retirement systems. Further answering, Defendants allege that this pensionable salary cap is subject to upward adjustment. Defendants deny the remaining allegations in Paragraph 15.

16. The Teachers' Retirement System of the State of Illinois ("TRS") is one of the affected State retirement systems.

**ANSWER:** Defendants admit the allegations in Paragraph 16.

17. Even one of the legislative leaders who pushed this legislation through the General Assembly, Illinois Senate President John Cullerton, has publicly acknowledged that Public Act 98-0599 suffers from "serious constitutional problems." *See Ray Long & Monique Garcia, Illinois Lawmakers Approve Major Pension Overhaul*, Chicago Tribune, Dec. 4, 2013.

**ANSWER:** On information and belief, Defendants deny the allegations in Paragraph 17 and further assert that the quoted statements are neither admissible nor relevant.

18. Many thousands of livelihoods depend on consistent enforcement of the Pension Protection Clause. Countless careers, retirements, personal investments and medical treatments have been planned in justifiable reliance not only on the promises that were made in collective bargaining agreements, employment agreements and the Illinois Pension Code, but also on the guarantee of the Pension Protection Clause.

**ANSWER:** Defendants lack knowledge sufficient to form a belief regarding the allegations in Paragraph 18 and therefore deny the allegations.

19. In this action, Illinois educators and school administrators who have devoted their careers to public service, on behalf of themselves and a class of similarly situated persons, respectfully ask this Honorable Court to enforce the Pension Protection Clause of the Illinois Constitution. Among other things, the plaintiffs seek a declaration that Public Act 98-0599 is void in its entirety because it violates the Pension Protection Clause of the Illinois Constitution.

**ANSWER:** Defendants admit that Plaintiffs are asking this Court to enforce their

interpretation of the Pension Protection Clause, but deny that they are entitled to that relief.

Defendants deny the remainder of Paragraph 19.

20. This court may exercise personal jurisdiction over defendants Governor Pat Quinn and Comptroller Judy Baar Topinka, pursuant to 735 ILCS 5/2-209(b), because they are residents of the State of Illinois.

**ANSWER:** Paragraph 20 consists of legal conclusions for which no answer is necessary.

Governor Quinn and Comptroller Topinka further admit that that the Court may exercise personal jurisdiction over them in their official capacities in this case.

21. This court may exercise personal jurisdiction over defendant Board of Trustees of TRS, pursuant to 735 ILCS 5/2-209(a)(1), because this action arises from the Board's transaction of business within Illinois. Alternatively, this court may exercise personal jurisdiction over the Board, pursuant to 735 ILCS 5/2-209(a)(7), because this action arises from the making or performance of a contract or promise substantially connected with Illinois. The Board has the capacity to be sued pursuant to 40 ILCS 5/16-171.

**ANSWER:** Paragraph 21 consists of legal conclusions for which no answer is necessary. The Board further admits that that the Court may exercise personal jurisdiction over them in this case.

22. Venue is proper in the Circuit Court of Cook County pursuant to 735 ILCS 5/2-101 because defendants Governor Pat Quinn and Comptroller Judy Baar Topinka reside in Cook County.

**ANSWER:** Defendants admit that Governor Quinn and Comptroller Topinka reside in Cook County. The remainder of Paragraph 20 consists of legal conclusions for which no answer is required.

23. Doris Heaton is a TRS member and annuitant. Before retiring, she worked as a librarian for the Hamilton County Unit 10 School District. She retired with approximately 24 years of service credit and lives in Franklin County, Illinois.

**ANSWER:** Defendants admit that Ms. Heaton is a TRS member and annuitant. Defendants further admit that she worked for the Hamilton County Unit 10 School District before retiring and that Ms. Heaton retired with more than 24 years of service credit. Defendants lack knowledge sufficient to form a belief regarding the remaining allegations in Paragraph 23 and

therefore deny the allegations.

24. Pamela Keller is a TRS member and annuitant. Before retiring, she worked as an elementary school teacher for the North Greene Unit School District No. 3 for approximately 34 years. She lives in Greene County, Illinois.

**ANSWER:** Defendants admit that Ms. Keller is a TRS member and annuitant. Defendants further admit that she worked for the North Greene Unit School District No. 3 before retiring and that Ms. Keller retired with more than 34 years of service credit. Defendants lack knowledge sufficient to form a belief regarding the remaining allegations in Paragraph 24 and therefore deny the allegations.

25. Kenneth Lee is a TRS member. He currently works as Superintendent of Iroquois County Community Unit School District No. 9. He lives in Iroquois County, Illinois. He will be 38 years old on June 1, 2014.

**ANSWER:** Defendants admit that Mr. Lee is a TRS member and that he currently works for Iroquois County Community Unit School District No. 9. Defendants further admit that Mr. Lee will be 38 years old on June 1, 2014. Defendants lack knowledge sufficient to form a belief regarding the remaining allegations in Paragraph 25 and therefore deny the allegations.

26. Hattie Doyle is a TRS member. She currently works as Principal of New Berlin High School in New Berlin, Illinois. She lives in Sangamon County, Illinois. She will be 41 years old on June 1, 2014.

**ANSWER:** Defendants admit that Ms. Doyle is a TRS member and that she works for New Berlin High School in New Berlin, Illinois. Defendants further admit that Ms. Doyle will be 41 years old on June 1, 2014. Defendants lack knowledge sufficient to form a belief regarding the remaining allegations in Paragraph 26 and therefore deny the allegations.

27. John Sawyer III, Ed.D., is a TRS member and annuitant. He formerly served as Superintendent of three Illinois school districts: West Harvey-Dixmoor School District #147; North Chicago Community Unit School District #187; and Sandridge School District #172. He lives in Cook County, Illinois.

**ANSWER:** Defendants admit that Mr. Sawyer is a TRS member and annuitant. Defendants



further admit that Mr. Sawyer worked for West Harvey-Dixmoor School District #147; North Chicago Community Unit School District #187; and Sandridge School District #172. Defendants lack knowledge sufficient to form a belief regarding the remaining allegations in Paragraph 27 and therefore deny the allegations.

28. Lance Landeck is a TRS member. He currently serves as Superintendent of Oakland Community Unit School District #5. He lives in Douglas County, Illinois. He will be 45 years old on June 1, 2014.

**ANSWER:** Defendants admit that Mr. Landeck is a TRS member and that he works for Oakland Community Unit School District #5. Defendants further admit that Mr. Landeck will be 45 years old on June 1, 2014. Defendants lack knowledge sufficient to form a belief regarding the remaining allegations in Paragraph 28 and therefore deny the allegations.

29. Kyle Thompson is a TRS member. He currently serves as Assistant Regional Superintendent of Regional Office of Education #11. He lives in Coles County, Illinois. He will be 31 years old on June 1, 2014.

**ANSWER:** Defendants admit that Mr. Thompson is a TRS member and that he is employed by Regional Office of Education #11. Defendants further admit that Mr. Thompson will be 31 years old on June 1, 2014. Defendants lack knowledge sufficient to form a belief regarding the remaining allegations in Paragraph 29 and therefore deny the allegations.

30. Michael Schiffman is a TRS member. He currently serves as Superintendent of Dakota Community Unit School District #201. He lives in Stephenson County, Illinois. He will be 41 years old on June 1, 2014.

**ANSWER:** Defendants admit that Mr. Schiffman is a TRS member and that he works for Dakota Community Unit School District #201. Defendants further admit that Mr. Schiffman will be 41 years old on June 1, 2014. Defendants lack knowledge sufficient to form a belief regarding the remaining allegations in Paragraph 30 and therefore deny the allegations.

31. Pat Quinn is the Governor of the State of Illinois. He resides in Chicago, Cook County, Illinois.

**ANSWER:** Defendants admit the allegations in Paragraph 31.

32. Judy Baar Topinka is the Comptroller of the State of Illinois. She resides in Riverside, Cook County, Illinois.

**ANSWER:** Defendants admit the allegations in Paragraph 32. 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.

33. The Board of Trustees of TRS is an entity created by Article 16 of the Illinois Pension Code. It has offices in Sangamon and DuPage Counties in Illinois.

**ANSWER:** Defendants admit the allegations in Paragraph 33.

34. Pursuant to 735 ILCS 5/2-801, the plaintiffs represent a class consisting of all individuals who are members of the Teachers' Retirement System of the State of Illinois and who are (a) retired teachers, or (b) active or retired school administrators.

**ANSWER:** Paragraph 34 consists of legal conclusions that Defendants deny, and to the extent it contains any factual allegations, Defendants deny them.

35. On information and belief, the class includes thousands of individuals. The class is therefore so numerous that joinder of all members is impracticable.

**ANSWER:** Defendants admit that the putative class includes thousands of individuals. Defendants deny the remainder of the allegations in Paragraph 35.

36. A common question of law is common to all members of the class: namely, whether Public Act 98-0599 is unconstitutional and void. This common question predominates over any questions affecting only individual members. The vested pension rights of all members of the class will be diminished by Public Act 98-0599 unless it is found to be unconstitutional.

**ANSWER:** Paragraph 36 consists of legal conclusions that Defendants deny, and to the extent it contains any factual allegations, Defendants deny them.

37. Doris Heaton, Pamela Keller, Kenneth Lee, Hattie Doyle, John Sawyer III, Ed.D., Lance Landeck, Kyle Thompson and Michael Schiffman are members of the class and will fairly and adequately protect the interests of the class.

**ANSWER:** Defendants admit that Ms. Heaton, Ms. Keller, Mr. Lee, Ms. Doyle, Mr. Sawyer III, Mr. Landeck, Mr. Thompson, and Mr. Schiffman are members of the putative class. Defendants deny the remaining allegations in Paragraph 37.

38. The class action is an appropriate method for the fair and efficient adjudication of this controversy.

**ANSWER:** Paragraph 38 consists of legal conclusions that Defendants deny, and to the extent it contains any factual allegations, Defendants deny them.

39. The plaintiffs repeat and reallege all the paragraphs above as though fully stated herein.

**ANSWER:** Defendants repeat and reincorporate their answers above.

40. Public Act 98-0599 violates the Pension Protection Clause (Art. XIII, § 5) of the Illinois Constitution.

**ANSWER:** Defendants deny the allegations in Paragraph 40.

41. Public Act 98-0599 therefore is void.

**ANSWER:** Defendants deny the allegations in Paragraph 41.

42. The plaintiffs and all other members of the class that they represent will be individually and directly harmed by the implementation and enforcement of Public Act 98-0599.

**ANSWER:** On information and belief, Defendants deny the allegations in Paragraph 42.

43. Under Public Act 98-0599, the COLA for Doris Heaton's pension annuity will be reduced.

**ANSWER:** Defendants admit the allegations in Paragraph 43.

44. If Public Act 98-0599 is implemented, Doris Heaton's pension benefits will be diminished or impaired.

**ANSWER:** Defendants deny the allegations in Paragraph 44.

45. Under Public Act 98-0599, the COLA for Pamela Keller's pension annuity will be reduced.

**ANSWER:** Defendants admit the allegations in Paragraph 45.

46. If Public Act 98-0599 is implemented, Pamela Keller's pension benefits will be diminished or impaired.

**ANSWER:** Defendants deny the allegations in Paragraph 46.

47. Under Public Act 98-0599, the COLA for Kenneth Lee's pension annuity will be reduced.

**ANSWER:** Defendants admit the allegations in Paragraph 47.

48. Under Public Act 98-0599, Kenneth Lee's minimum retirement age will be increased.

**ANSWER:** Defendants admit the allegations in Paragraph 48.

49. Under Public Act 98-0599, Kenneth Lee's pensionable salary will be subject to a new cap.

**ANSWER:** Defendants admit the allegations in Paragraph 49.

50. If Public Act 98-0599 is implemented, Kenneth Lee's pension benefits will be diminished or impaired.

**ANSWER:** Defendants deny the allegations in Paragraph 50.

51. Under Public Act 98-0599, the COLA for Hattie Doyle's pension annuity will be reduced.

**ANSWER:** Defendants admit the allegations in Paragraph 51.

52. Under Public Act 98-0599, Hattie Doyle's minimum retirement age will be increased.

**ANSWER:** Defendants admit the allegations in Paragraph 52.

53. Under Public Act 98-0599, Hattie Doyle's pensionable salary will be subject to a new cap.

**ANSWER:** Defendants lack knowledge sufficient to form a belief regarding the allegations in Paragraph 53 and therefore deny the allegations.

54. If Public Act 98-0599 is implemented, Hattie Doyle's pension benefits will be diminished or impaired.

**ANSWER:** Defendants deny the allegations in Paragraph 54.

55. Under Public Act 98-0599, the COLA for John Sawyer III, Ed.D.'s pension annuity will be reduced.

**ANSWER:** Defendants admit the allegations in Paragraph 55.

56. If Public Act 98-0599 is implemented, John Sawyer III, Ed.D.'s pension benefits will be diminished or impaired.

**ANSWER:** Defendants deny the allegations in Paragraph 56.

57. Under Public Act 98-0599, the COLA for Lance Landeck's pension annuity will be reduced.

**ANSWER:** Defendants admit the allegations in Paragraph 57.

58. Under Public Act 98-0599, Lance Landeck's minimum retirement age will be increased.

**ANSWER:** Defendants admit the allegations in Paragraph 58.

59. Under Public Act 98-0599, Lance Landeck's pensionable salary will be subject to a new cap.

**ANSWER:** Defendants lack knowledge sufficient to form a belief regarding the allegations in Paragraph 59 and therefore deny the allegations.

60. If Public Act 98-0599 is implemented, Lance Landeck's pension benefits will be diminished or impaired.

**ANSWER:** Defendants deny the allegations in Paragraph 60.

61. Under Public Act 98-0599, the COLA for Kyle Thompson's pension annuity will be reduced.

**ANSWER:** Defendants admit the allegations in Paragraph 61.

62. Under Public Act 98-0599, Kyle Thompson's minimum retirement age will be increased.

**ANSWER:** Defendants admit the allegations in Paragraph 62.

63. Under Public Act 98-0599, Kyle Thompson's pensionable salary will be subject

to a new cap.

**ANSWER:** Defendants lack knowledge sufficient to form a belief regarding the allegations in Paragraph 63 and therefore deny the allegations.

64. If Public Act 98-0599 is implemented, Kyle Thompson's pension benefits will be diminished or impaired.

**ANSWER:** Defendants deny the allegations in Paragraph 64.

65. Under Public Act 98-0599, the COLA for Michael Schiffman's pension annuity will be reduced.

**ANSWER:** Defendants admit the allegations in Paragraph 64.

66. Under Public Act 98-0599, Michael Schiffman's minimum retirement age will be increased.

**ANSWER:** Defendants admit the allegations in Paragraph 66.

67. Under Public Act 98-0599, Michael Schiffman's pensionable salary will be subject to a new cap.

**ANSWER:** Defendants admit the allegations in Paragraph 67.

68. If Public Act 98-0599 is implemented, Michael Schiffman's pension benefits will be diminished or impaired.

**ANSWER:** Defendants deny the allegations in Paragraph 68.

69. This case presents an actual controversy concerning the unconstitutionality of Public Act 98-0599. The plaintiffs and all members of the class they represent have a direct interest in that actual controversy.

**ANSWER:** Defendants admit that this case presents an actual controversy concerning the unconstitutionality of Public Act 98-0599. The remaining allegations in Paragraph 69 consist of legal conclusions and therefore require no answer, and to the extent it contains any factual allegations, Defendants deny them

70. Preliminary and permanent injunctive relief are appropriate and necessary in this case because the plaintiffs and members of the class they represent have protectable and vested pension rights that are guaranteed by the Pension Protection Clause of the Illinois Constitution,

will be irreparably harmed by the implementation and enforcement of Public Act 98-0599, have no adequate remedy at law, and are likely to succeed on the merits of this case. Any weighing of the equities would mandate the issuance of preliminary and permanent injunctive relief in favor of the plaintiffs and members of the class they represent.

**ANSWER:** Paragraph 70 contains legal conclusions that Defendants deny. To the extent Paragraph 70 contains any factual allegations, Defendants deny those allegations.

**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.

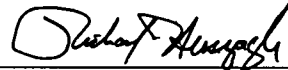
15. In light of the magnitude of the pension problem and all of the other efforts the State has made to date, the Act represents a valid exercise of the State's reserved sovereign powers to modify contractual rights and obligations, including contractual obligations of the State established under Article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

LISA MADIGAN  
Illinois Attorney General



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

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

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**This document relates to:** )  
 )  
DORIS HEATON, PAMELA KELLER, )  
KENNETH LEE, HATTIE DOYLE, JOHN )  
SAWYER III, Ed.D., LANCE LANDECK, )  
KYLE THOMPSON, and MICHAEL )  
SCHIFFMAN, on behalf of themselves and a )  
class of similarly situated persons, )  
Plaintiffs, )  
v. )  
PAT QUINN, Governor of the State of )  
Illinois, in his official capacity, JUDY BAAR )  
TOPINKA, Comptroller of the State of Illinois, )  
in her official capacity, and THE BOARD )  
OF TRUSTEES OF THE TEACHERS' )  
RETIREMENT SYSTEM OF THE )  
STATE OF ILLINOIS, )  
Defendants. )

Originally Filed as  
Cook County Case No.  
2013 CH 28406

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**NOTICE OF FILING**

To: See attached Certificate of Service

PLEASE TAKE NOTICE that on the 15<sup>th</sup> 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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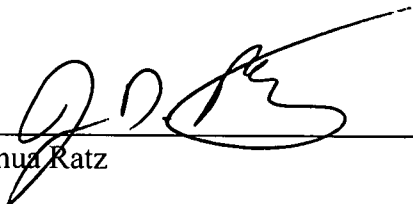
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