

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
<b>This document relates to:</b>	)	
	)	
STATE UNIVERSITIES ANNUITANTS	)	
ASS'N, <i>et al.</i> ,	)	
Plaintiffs,	)	Originally Filed as
v.	)	Champaign County Case
STATE UNIVERSITIES RETIREMENT	)	2014 MR 207
SYSTEM, <i>et al.</i> ,	)	
Defendants.	)	

**ANSWER AND DEFENSES**

Defendants State Universities Retirement System of the State of Illinois, 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 Dan Rutherford, in his official capacity as the Treasurer of the State of Illinois (collectively "Defendants"), for their answer to the Amended Complaint filed by Plaintiffs State Universities Annuitants Association, *et al.*, state as follows:

1. The Plaintiffs in this case are current and former employees of the University of Illinois at Champaign-Urbana, and Parkland Community College. They are all members of the State Universities Retirement System ("SURS") who are vested in their pension rights.<sup>1</sup>

<sup>1</sup> State Universities Annuitants' Association ("SUAA") is an Illinois Corporation whose purpose is to promote the welfare of current and retired employees of the Illinois State Universities System, who are eligible to receive a pension upon their retirement from the system under the State Universities' Retirement System ("SURS"), and as a Plaintiff in this action, represents its membership.

**ANSWER:** Defendants admit that the individual named plaintiffs are current and former employees of the University of Illinois at Champaign-Urbana, and Parkland Community College and that they are members of SURS who are "vested" in their pension rights, in the sense of

being eligible to receive an annuity in accordance with the eligibility criteria set forth in Article 15-135 of the Pension Code (hereinafter "vested"). Defendants lack knowledge sufficient to form a belief regarding the allegations in Footnote 1 and therefore deny those allegations. Defendants further deny that SUAA has standing to represent the interests of its members with respect to the claims and relief at issue in this suit.

2. Upon joining the State University System, these Plaintiffs entered into a contract with the State whereby they contributed (and those who are current employees continue to contribute) a substantial portion of their income to SURS, and in exchange, they were to receive a pension with certain specified benefits upon their retirement. In addition, these Plaintiffs entered into contracts with the State whereby they voluntarily contributed more money and/or voluntarily relinquished certain rights available in one pension plan for the benefits of another, benefits that are also subject to the deprivations of PA 98-599. These individuals planned their retirement around their pensions and for many it is (or will be) their only income.

**ANSWER:** Defendants admit that, upon becoming members of SURS, Plaintiff established a contractual relationship with SURS according to the terms of the Pension Code in effect at that time and that thereafter some of them made additional contributions or took other actions to obtain specific additional rights under the Pension Code. Defendants lack knowledge sufficient to form a belief regarding whether Plaintiffs planned their retirement around their pensions and whether for many it is or will be their only income and therefore deny those allegations. Defendants deny the remaining allegations in Paragraph 2.

3. The Plaintiffs have all paid their contributions religiously. However, the State chose not to fully fund SURS and other State pension systems in spite of lawsuits filed by pensioners asking that the State be required to do so. The courts have repeatedly held that pensioners may have the right to the fruits of their contractual bargains (i.e. the pensions), but not until those rights come due, and they therefore cannot sue the State for failure to fund the pensions. Taking advantage of those holdings, the State continued to leave the pensions less than fully funded. The State's past failure to fund these obligations has now created a financial crisis.

**ANSWER:** Defendants admit that Plaintiffs made the required contributions to SURS. Defendants further admit that the courts have held in specific cases that pensioners could not sue the State for failure to fund the pension systems at certain levels. Defendants deny the remaining

allegations in Paragraph 3 and, further averring, allege that the financial crisis affecting the Defendant retirement systems was caused in substantial part by unforeseen and unanticipated factors, as more fully described in the affirmative matter in defense of the plaintiffs' claims asserted at the end of this pleading.

4. In an effort to resolve that crisis, on December 5, 2013, the Governor signed Public Act 98-599 into law. The purpose of that Act however, is not to resolve the underfunding, but rather to shift the consequences of that underfunding from the State to the SURS members.<sup>2</sup>

<sup>2</sup> Indeed, with few exceptions, the Act shifts the burden to nearly all State employees and retirees resulting in several similar lawsuits being filed across the state. The Plaintiffs in this action however, are limited to members of SURS, and their concerns regard the effect of this legislation on SURS members.

**ANSWER:** Defendants admit that on December 5, 2013, the Governor signed Public Act 98-599 into law and that the Plaintiffs in this action are members of SURS, but Defendants deny the remaining allegations in Paragraph 4.

5. SUAA members, including the Plaintiffs, each face having their vested pensions diminished, reduced and/or impaired. PA 98-599 diminishes the Plaintiffs' vested pension rights in six significant ways: (1) PA 98-599 reduces the basis on which Automatic Annual Increases<sup>3</sup> or Cost of Living Adjustments ("COLAs") are calculated; (2) PA 98-599 deprives employees of the benefit of a compounding COLA; (3) PA 98-599 deprives certain employees of COLAs in certain years; (4) PA 98-599 caps the salary that may be used to calculate an annuitants' annuity thereby impairing the vested pension benefits; (5) PA 98-599 increases the years of service required to retire thereby increasing the costs of benefits and reducing the value of benefits; and (6) PA 98-599 reduces the effective rate of interest formula for members who have elected to participate in SURS' portable retirement plan.

<sup>3</sup> The proper term is Automatic Annual Increase or "AAI". Plaintiffs use the term "COLA" herein.

**ANSWER:** Defendants admit that the plaintiffs use the term "COLA" to refer to annual annuity increases but deny the remaining allegations in Paragraph 5. 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.

6. By diminishing the Plaintiffs' vested pension rights the Act violates the Pension Clause, the Contracts Clause, and the Takings Clause of the Illinois Constitution. Plaintiffs bring this case asking the Court to declare Public Act 98-599 unconstitutional, void, and unenforceable.

**ANSWER:** Defendants admit that Plaintiffs bring this case asking the Court to declare Public Act 98-599 unconstitutional, void, and unenforceable. Defendants deny the remaining allegations in Paragraph 6.

7. Moreover, by laying the burden created by its underfunding of the pensions on the members of SURS themselves, the State puts many of them at substantial financial risk. Many of these annuitants are on fixed incomes and have planned their retirement around their pensions. Many SUAA members are likely to find themselves in considerable financial straits as a result.

**ANSWER:** Defendants lack knowledge sufficient to form a belief regarding whether SURS annuitants are on fixed incomes or have planned their retirement around their pensions and therefore deny those allegations. Defendants also lack knowledge sufficient to form a belief regarding whether many SUAA members will find themselves in considerable financial straits and therefore deny those allegations. Defendants deny the remainder of Paragraph 7.

8. Because the Act will put a substantial financial burden on many SURS annuitants (along with many other State retirees), efforts were made to have the State stay implementation of the Act until the disputes over its constitutionality are resolved.<sup>4</sup>

<sup>4</sup> Specifically, the We Are One Illinois Coalition, attempted, and failed, to reach an agreement with the State to stay implementation, which is currently set for July 1, 2014. We Are One Illinois Coalition filed a complaint in Sangamon County, which specifically alleges as follows: "10. Prior to initiating this lawsuit [the We Are One lawsuit], We Are One Illinois Coalition sought to reach an agreement with the State pension systems and the State that would stay implementation of Public Act 98-0599 pending a decision on whether Public Act 98-0599 is constitutional. We Are One Illinois Coalition believes that a stay would: [1] alleviate the substantial administrative burden the pension systems face in implementing by June 1, 2014 the changes Public Act 98-0599 requires; [2] avoid

the similar, if not greater, burden, expense and confusion that will ensue when the pension systems must return their members to the status quo when Public Act 98-0599 is found unconstitutional; [3] afford the systems the time they need to provide meaningful counsel to their members, a critical function the systems presently are unable to satisfy; and [4] protect pension system members from the irreparable harm that is a consequence of the State's unlawful conduct. 11. The State, however, recently rejected We Are One Illinois Coalition's pre-litigation efforts." Complaint 2014 CH 00048 filed in Sangamon County, paragraphs 10 and 11.

**ANSWER:** With respect to the alleged attempts to avoid implementation of the Act, the Defendants admit that the other pleading referred to makes the allegations described, and further answering, incorporate by reference their answer to those allegations. Defendants deny the remaining allegations in Paragraph 8.

9. Those efforts failed and Plaintiffs herein may request injunctive relief to preserve the status quo.

**ANSWER:** Defendants incorporate by reference their answer to Paragraph 8. The remaining allegations in Paragraph 9 are legal conclusions that Defendants deny and, to the extent they are factual allegations, Defendants deny them.

10. This Complaint for a declaration that Public Act 98-0599 is unconstitutional and seeking to have it held void follows.

**ANSWER:** Defendants admit that this Complaint purports to seek a declaration that Public Act 98-0599 is unconstitutional and seeking to have it held void.

11. Plaintiff STATE UNIVERSITIES ANNUITANTS' ASSOCIATION ("SUAA") is an Illinois Corporation. SUAA members are members of the SURS pension system in the State of Illinois. SUAA's purpose is to promote the welfare of current and retired employees of the Illinois State Universities System. As a Plaintiff in this action, SUAA represents its members, all of whom are SURS members.

**ANSWER:** Defendants lack knowledge sufficient to form a belief regarding the allegations in Paragraph 11 and therefore deny the allegations.

12. Plaintiff, DOMINIC "NICK" AREND, is a citizen of the State of Illinois and a resident of Champaign County, Illinois. Nick is currently employed by the University of Illinois at Urbana Champaign [hereafter "UIUC"] in Champaign County, Illinois, as a database designer. Nick is a member of SURS, is fully vested, and has made all required contributions to SURS.

Nick is entitled to all of the benefits that were conferred by the Illinois Pension Code when he was hired and to not have them lessened at any time thereafter. The State offered him the choice of three pension plans (offer). He made an irrevocable election to enroll in the portable plan (acceptance), thereby foregoing the opportunities afforded by the traditional (defined benefit) and self-managed plans (consideration). Nick also voluntarily purchased additional service time and as a result, voluntarily contributed additional monies to SURS which constitutes additional consideration. Nick therefore has a contractual right to his pension as it is defined before implementation of PA 98-599.

**ANSWER:** Defendants admit that Mr. Arend is currently employed by UIUC, that he has made all required contributions to SURS, and that he is a fully vested member of SURS authorized to receive an annuity according to the relevant provisions Pension Code. Defendants further admit that, under the Pension Code, Mr. Arend had a choice among three pension plans, that Mr. Arend elected to enroll in the portable plan, and that he voluntarily purchased additional service credit. Defendants lack knowledge sufficient to form a belief regarding Mr. Arend's citizenship, place of residency, and exact occupation and therefore deny those allegations. The remaining allegations in Paragraph 12 are legal conclusions that Defendants deny and, to the extent they are factual allegations, Defendants deny them.

13. Plaintiff, JOYCE BEASLEY, is a citizen of the State of Illinois and a resident of Champaign County, Illinois. Joyce was employed by UIUC, as an administrative secretary in the Chemistry Department of the College of Liberal Arts from 1995 to 2005 when she retired. Joyce is a member of SURS, is fully vested, and has made all required contributions to SURS. Joyce is entitled to all benefits conferred by the Illinois Pension Code when she became employed and to not have them lessened at any time thereafter. The State offered her the choice of three pension plans (offer). She made an irrevocable election to enroll in the traditional (defined benefit) plan (acceptance), thereby foregoing the opportunities afforded by the portable and self-managed plans (consideration). Joyce therefore has a contractual right to her pension as it is defined before implementation of PA 98-599.

**ANSWER:** Defendants admit that Ms. Beasley has made all required contributions to SURS and that she is a fully vested member of SURS authorized to receive an annuity according to the relevant provisions Pension Code, and that she retired in 2005. Defendants further admit that, under the Pension Code, Ms. Beasley had a choice among three pension plans, that Ms. Beasley was employed by UIUC when she retired, and that she has made all required contributions to

SURS. Defendants deny that Ms. Beasley elected to enroll in the traditional plan and further state she elected to enroll in the portable plan. Defendants lack knowledge sufficient to form a belief regarding Ms. Beasley's citizenship, place of residency, exact occupation, and the number of years she was employed at UIUC and therefore deny those allegations. The remaining allegations in Paragraph 13 are legal conclusions that Defendants deny and, to the extent they are factual allegations, Defendants deny them.

14. Plaintiff, BRUCE BUSBOOM is a citizen of the State of Illinois and a resident of Champaign County, Illinois. Bruce was employed by UIUC, as a carpenter and construction superintendent from 1979 to 2007 when he retired. Bruce is a member of SURS, is fully vested, and has made all required contributions to SURS. Bruce is entitled to all benefits conferred by the Illinois Pension Code when he became employed and to not have them lessened at any time thereafter. The State offered him the choice of three pension plans (offer). He made an irrevocable election to enroll in the traditional (defined benefit) plan (acceptance), thereby foregoing the opportunities afforded by the portable and self-managed plans (consideration). Bruce therefore has a contractual right to his pension as it is defined before implementation of PA 98-599.

**ANSWER:** Defendants admit that Mr. Busboom has made all required contributions to SURS, that he is a fully vested member of SURS authorized to receive an annuity according to the relevant provisions Pension Code, and that he retired in 2008. Defendants further admit that Mr. Busboom was employed by UIUC when he retired. Defendants further admit that, under the Pension Code, Mr. Busboom had a choice among three pension plans and that Mr. Busboom elected to enroll in the traditional plan. Defendants lack knowledge sufficient to form a belief regarding Mr. Busboom's citizenship, place of residency, exact occupation, and the number of years he was employed at UIUC and therefore deny those allegations. The remaining allegations in Paragraph 14 are legal conclusions that Defendants deny and, to the extent they are factual allegations, Defendants deny them.

15. Plaintiff, OLIVER CLARK is a citizen of the State of Illinois and a resident of Champaign County, Illinois. Oliver was employed by UIUC, as Chief of Campus Police and Director of Public Safety from 1995 to 2005 when he retired. Oliver is a member of SURS, is fully vested, and has made all required contributions to SURS. Oliver is entitled to all benefits

conferred by the Illinois Pension Code when he became employed and to not have them lessened at any time thereafter. The State offered him the choice of three pension plans (offer). He made an irrevocable election to enroll in the portable plan (acceptance), foregoing the opportunities afforded by the traditional (defined benefit) and self-managed plans (consideration). Oliver also voluntarily purchased additional service time thereby voluntarily contributing additional monies to SURS which constitutes additional consideration. Oliver therefore has a contractual right to his pension as it is defined before implementation of PA 98-599.

**ANSWER:** Defendants admit that Mr. Clark has made all required contributions to SURS, that he is a fully vested member of SURS authorized to receive an annuity according to the relevant provisions Pension Code, and that he retired 2006. Defendants further admit that Mr. Clark was employed by UIUC when he retired. Defendants further admit that, under the Pension Code, Mr. Clark had a choice among three pension plans, that Mr. Clark elected to enroll in the portable plan, and that he voluntarily purchased additional service credit. Defendants lack knowledge sufficient to form a belief regarding Mr. Clark's citizenship, place of residency, exact occupation, and the number of years he was employed at UIUC and therefore deny those allegations. The remaining allegations in Paragraph 15 are legal conclusions that Defendants deny and, to the extent they are factual allegations, Defendants deny them.

16. Plaintiff, AIMEE DENSMORE, is a citizen of the State of Illinois and a resident of Champaign County, Illinois. Aimee is currently employed by Parkland Community College in Champaign County, Illinois, as an Academic Scheduler. Aimee is a member of SURS, is fully vested, and has made all required contributions to SURS. Aimee is entitled to all benefits conferred by the Illinois Pension Code when she became employed and to not have them lessened at any time thereafter. The State offered her the choice of three pension plans (offer). She made a voluntary, irrevocable election to take the traditional (defined benefit) plan (acceptance) thereby foregoing the opportunities afforded by the portable and self-managed plans (consideration). Aimee therefore has a contractual right to her pension as it is defined before implementation of PA 98-599.

**ANSWER:** Defendants admit that Ms. Densmore has made all required contributions to SURS, and that she is a fully vested member of SURS authorized to receive an annuity according to the relevant provisions Pension Code. Defendants further admit that Ms. Desnmore is currently employed by Parkland College. Defendants admit that, under the Pension Code, Ms.



Densmore had a choice among three pension plans and that Ms. Densmore elected to enroll in the traditional plan. Defendants lack knowledge sufficient to form a belief regarding Ms. Densmore's citizenship, place of residency, and exact occupation and therefore deny those allegations. The remaining allegations in Paragraph 16 are legal conclusions that Defendants deny and, to the extent they are factual allegations, Defendants deny them.

17. Plaintiff, MARCIA HAMOR, is a citizen of the State of Illinois and a resident of Champaign County, Illinois. Marcia is currently employed by Parkland Community College in Champaign County, Illinois, as a payroll accountant. Marcia is a member of SURS, is fully vested, and has made all required contributions to SURS. Marcia is entitled to all benefits conferred by the Illinois Pension Code when she became employed and to not have them lessened at any time thereafter. The State offered her the choice of three pension plans (offer). She made a voluntary, irrevocable election to take the portable plan (acceptance) thereby foregoing the opportunities afforded by the traditional (defined benefit) and self-managed plans (consideration). Marcia therefore has a contractual right to her pension as it is defined before implementation of PA 98-599.

**ANSWER:** Defendants admit that Ms. Hamor has made all required contributions to SURS, that she is a fully vested member of SURS authorized to receive an annuity according to the relevant provisions Pension Code, and that she is currently employed by Parkland College. Defendants admit that, under the Pension Code, Ms. Hamor had a choice among three pension plans and that Ms. Hamor elected to enroll in the portable plan. Defendants lack knowledge sufficient to form a belief regarding Ms. Hamor's citizenship, place of residency, and exact occupation and therefore deny those allegations. The remaining allegations in Paragraph 17 are legal conclusions that Defendants deny and, to the extent they are factual allegations, Defendants deny them.

18. Plaintiff, MAUREEN MCCORD, is a citizen of the State of Illinois and a resident of Champaign County, Illinois. Maureen's husband, John McCord, was a citizen of the State of Illinois and a resident of Champaign County until his death. He was employed by UIUC as a professor of law for approximately 40 years, retiring in 1999. He died in 2011. After his death, his pension devolved to her, giving her all the rights to his pension that he had at the time of his death. Since that time, Maureen has been collecting a survivor's annuity. As a survivor of a SURS annuitant, Maureen is herself an annuitant in SURS. At all times during his employment, her husband made all required contributions thereby entitling himself, and later his wife, to all

benefits conferred by the Illinois Pension Code when he became employed and to not have them lessened at any time thereafter. Her husband also voluntarily purchased additional service time thereby voluntarily contributing additional monies to SURS. These conditions serve as consideration. John McCord therefore had a contractual right to his pension as it is defined before implementation of PA 98-599, which, upon his death, devolved to Maureen McCord.

**ANSWER:** Defendants admit that John McCord was employed by UIUC and that he died 2011. Defendants further admit that Mr. McCord made all required contributions to SURS and was a fully vested member of SURS authorized to receive an annuity according to the relevant provisions Pension Code. Defendants further admit that Maureen McCord has been collecting a survivor's annuity since 2011. Defendants deny that Mr. McCord was employed by UIUC for approximately 40 years, that he retired in 1999, and that he purchased additional service credit by contributing additional money to SURS. Defendants further state that Mr. McCord was employed by UIUC for approximately 32 years before retiring in 1983. Defendants lack knowledge sufficient to form a belief regarding Ms. McCord's citizenship and place of residency and therefore deny those allegations. Defendants also lack knowledge sufficient to form a belief regarding Mr. McCord's citizenship, place of residency, and exact occupation at UIUC and therefore deny those allegations. The remaining allegations in Paragraph 18 are legal conclusions that Defendants deny and, to the extent they are factual allegations, Defendants deny them.

19. Plaintiff, RICHIE PANKAU is a citizen of the State of Illinois and a resident of Champaign County, Illinois. Richie is currently employed by UIUC as a refrigeration mechanic and pipefitter. Richie is a member of SURS, is fully vested, and has made all required contributions to SURS. Richie is entitled to all benefits conferred by the Illinois Pension Code when he became employed and to not have them lessened at any time thereafter. The State offered him the choice of three pension plans (offer). He made a voluntary, irrevocable election to take the traditional (defined benefit) plan (acceptance) thereby foregoing the opportunities afforded by the portable and self-managed plans (consideration). Richie also voluntarily purchased additional service time thereby voluntarily contributing additional monies to SURS which constitutes additional consideration. Richie therefore has a contractual right to his pension as it is defined before implementation of PA 98-599.

**ANSWER:** Defendants admit that Mr. Pankau has made all required contributions to SURS and that he is a fully vested member of SURS authorized to receive an annuity according to the

relevant provisions Pension Code. Defendants further admit that Mr. Pankau is currently employed by UIUC. Defendants admit that, under the Pension Code, Mr. Pankau had a choice among three pension plans and that Mr. Pankau elected to enroll in the traditional plan. Defendants deny that Mr. Pankau purchased additional service time and that he contributed additional money to SURS. Defendants lack knowledge sufficient to form a belief regarding Mr. Pankau's citizenship, place of residency, and exact occupation and therefore deny those allegations. The remaining allegations in Paragraph 19 are legal conclusions that Defendants deny and, to the extent they are factual allegations, Defendants deny them.

20. Plaintiff, BRUCE REZNICK, is a citizen of the State of Illinois and a resident of Champaign County, Illinois. Bruce is currently employed by UIUC, in Champaign County, Illinois, as a Professor of Mathematics. Bruce is a member of SURS, is fully vested, and has made all required contributions to SURS. Bruce is entitled to all benefits conferred by the Illinois Pension Code when he became employed and to not have them lessened at any time thereafter. The State offered him the choice of three pension plans (offer). He made a voluntary, irrevocable election to take the portable plan (acceptance) thereby foregoing the opportunities afforded by the traditional (defined benefit) and self-managed plans (consideration). Bruce also voluntarily purchased additional service time and as a result, voluntarily contributed additional monies to SURS which constitutes additional consideration. Bruce therefore has a contractual right to his pension as it is defined before implementation of PA 98-599.

**ANSWER:** Defendants admit that Mr. Reznick has made all required contributions to SURS related to his service and that he is a fully vested member of SURS authorized to receive an annuity according to the relevant provisions Pension Code. Defendants further admit that Mr. Reznick is currently employed by UIUC. Defendants admit that, under the Pension Code, Mr. Reznick had a choice among three pension plans and that Mr. Reznick elected to enroll in the portable plan. Defendants deny that Mr. Reznick purchased additional service time and that he contributed additional money to SURS to do so. Defendants lack knowledge sufficient to form a belief regarding Mr. Reznick's citizenship, place of residency, and exact occupation and therefore deny those allegations. The remaining allegations in Paragraph 20 are legal conclusions that Defendants deny and, to the extent they are factual allegations, Defendants deny them.

Further answering, Defendants allege that some of the benefits for which Mr. Reznick was eligible under the Pension Code were added to the Pension Code after he became a SURS member, that he was not required to make higher contributions for them, that the benefits he would receive under Public Act 98-599 will in all probability be more than the benefits available to him under the provisions of the Pension Code in effect when he first became a member, and that, consequently, relevant provisions of Public Act 98-599 applicable to him are valid and constitutional.

21. Plaintiff, YVONNE SERGENT, is a citizen of the State of Illinois and a resident of Champaign County, Illinois. Yvonne is currently employed by UIUC in Champaign County, Illinois, as an administrative assistant. Yvonne is a member of SURS, is fully vested, and has made all required contributions to SURS. Yvonne is entitled to all benefits conferred by the Illinois Pension Code when she became employed and to not have them lessened at any time thereafter. The State offered her the choice of three pension plans (offer). She made a voluntary, irrevocable election to take the traditional (defined benefit) plan (acceptance) thereby foregoing the opportunities afforded by the portable and self-managed plans (consideration). Yvonne therefore has a contractual right to her pension as it is defined before implementation of PA 98-599.

**ANSWER:** Defendants admit that Ms. Sergent has made all required contributions to SURS and that she is a fully vested member of SURS authorized to receive an annuity according to the relevant provisions Pension Code. Defendants further admit that Ms. Sergent is currently employed by UIUC. Defendants admit that, under the Pension Code, Ms. Sergent had a choice among three pension plans and that Ms. Sergent elected to enroll in the traditional plan. Defendants lack knowledge sufficient to form a belief regarding Ms. Sergent's citizenship, place of residency, and exact occupation and therefore deny those allegations. The remaining allegations in Paragraph 21 are legal conclusions that Defendants deny and, to the extent they are factual allegations, Defendants deny them.

22. Defendant STATE UNIVERSITIES RETIREMENT SYSTEM (hereafter "SURS") is a unit of the State that provides retirement annuities and other benefits to employees who work for Illinois public universities, community colleges, and other affiliated groups. Its official mission is "[to] secure and deliver the retirement benefits promised to our members."

(See <http://www.surs.com/about-surs>.) SURS was established by Article 15 of the Illinois pension code, 40 ILCS 5/15-101 *et seq.* SURS is headquartered at 1901 Fox Drive, Champaign, Illinois 61820.

**ANSWER:** Defendants admit the allegations in Paragraph 22.

23. Defendant PATRICK QUINN is the Governor of the State of Illinois. Governor Quinn signed Senate Bill 1 into law creating PA 98-599. He is sued in his official capacity as Governor of the State of Illinois.

**ANSWER:** Defendants admit the allegations in Paragraph 23.

24. Defendant JUDY BAAR TOPINKA is the Comptroller of the State of Illinois. As Comptroller, Defendant Topinka is responsible for payments into and out of the State's treasury including monies that should be disbursed through SURS, discussed herein. She is sued in her official capacity.

**ANSWER:** Defendants admit the allegations in Paragraph 24. 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.

25. Defendant DAN RUTHERFORD is the Treasurer of the State of Illinois. Defendant Rutherford is responsible for the safekeeping and investment of State funds, including monies that should be disbursed through SURS as discussed herein. Defendant Rutherford is sued in his official capacity.

**ANSWER:** Defendants admit the allegations in Paragraph 25. 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.

26. This Court has subject matter jurisdiction over the constitutional challenges to Public Act 98-0599.

**ANSWER:** Defendants admit the allegations in Paragraph 26.

27. The actions complained of herein occurred in this State and in this County. All individual Plaintiffs reside in this County. The primary entity responsible for providing the benefits for which Plaintiffs contracted is SURS, which is based in this County.

**ANSWER:** Defendants lack knowledge sufficient to form a belief regarding individual Plaintiffs' residency and therefore deny those allegations. Defendants admit the remaining allegations in Paragraph 27.

28. The Court therefore has jurisdiction over Defendant SURS pursuant to 735 ILCS 5/2-209(a)(1). Defendant SURS is also subject to the jurisdiction of this Court pursuant to 735 ILCS 5/2-209(a)(7) because the lawsuit derives from a contractual relationship in this State. This Court has jurisdiction over Governor Quinn, Comptroller Topinka, and Treasurer Rutherford pursuant to 735 ILCS 5/2-209(b)(4) because they are elected officials of the State of Illinois, and are located and doing business within the State.

**ANSWER:** Defendants admit that this court has jurisdiction over SURS. The remaining allegations in Paragraph 28 are legal conclusions for which no answer is required.

29. Venue is proper in this Court pursuant to 735 ILCS 5/2-101 because the Constitutional violations will occur in this County, because the contracts which form the basis of one of the Constitutional violations were formed and will be breached in this county, because the primary Defendant is located in this County. Additionally all Plaintiffs reside in this County.

**ANSWER:** Defendants lack knowledge sufficient to form a belief regarding individual Plaintiffs' residency and therefore deny those allegations. Defendants admit that venue is proper in this Court, but deny the remaining allegations in Paragraph 29.

30. Plaintiffs admit the first sentence of paragraph 30 and do not dispute notice that the plaintiffs in this case challenge the constitutionality of the amendments to the Pension Code.

**ANSWER:** Defendants admit the allegations in Paragraph 30.

31. Illinois held a Constitutional Convention in 1970.

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

32. Prior to that time, if participation in a pension was mandatory, employees did not have contractual rights (*Bergin v. Board of Trustees* 202 N.E.2d 489, 494 (1979)) and as a result, the legislature could change or even revoke them at will.

**ANSWER:** Paragraph 32 contains legal conclusions for which no answer is required.

33. By contrast, where participation was optional, the employee indeed had contractual rights. (*Bardens v. Board of Trustees*, 22 Ill.2d 56 (1961)).

**ANSWER:** Paragraph 33 contains legal conclusions for which no answer is required.

34. This created a concern about the security of the retirement of State University Employees among others, particularly given that they were not eligible for Social Security.

**ANSWER:** Paragraph 34 contains legal conclusions to which no answer is required, and to the extent it contains factual allegations, Defendants lack knowledge sufficient to form a belief as to their accuracy and therefore deny those allegations.

35. The Pension Clause of the Illinois Constitution provides that security by making an employee's pension an enforceable contract. It states:

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.)

**ANSWER:** Defendants admit that Paragraph 35 accurately quotes the Pension Clause of the Illinois Constitution. Defendants deny the remaining allegations in Paragraph 35.

36. The effects of PA 98-599 are to diminish pensions of the Plaintiffs and members of Plaintiff SUAA in violation of the Pension Clause.

**ANSWER:** Defendants deny the allegations in Paragraph 36.

37. The Contracts Clause of the Illinois Constitution requires the State to abide by its contracts. It provides:

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.

(Ill. Const. 1970, art I, §16.)

**ANSWER:** Defendants admit that Paragraph 37 accurately quotes Article I, Section 16 of the Illinois Constitution. The remaining allegations in Paragraph 37 contain legal conclusions for which no answer is required.

38. Plaintiffs voluntarily elected one of the following pension plans:

a. A standard pension plan which provided an annuity for life and which provides for a survivors annuity;<sup>5</sup>

b. A portable pension plan which while not providing the survivor's annuity,<sup>6</sup> provides for payment of a lump sum at retirement; or

c. A self-managed pension plan that establishes an account in the member's name into which his contributions and those of his employer are deposited and with which the member can invest in a selection of mutual funds, stable value funds, and/or variable annuities as he so chooses.<sup>7</sup>

<sup>5</sup>In addition, a member that elects the traditional plan or the portable plan takes the chance that the underfunding might at some point cost him his pension. Meanwhile, had he chosen the self-managed plan, while he gives up the right to receive a defined benefit for life (which might be more than he gets in the self-managed plan) he forces the State to immediately fund his pension and thereby avoid the potential that underfunding would cost him his pension under the standard or portable plan. By the same token, a member who elects the portable plan also forgoes the right to a defined benefit for the life of a surviving spouse without a significant discount (which again, might be more than he gets in the portable plan.)

<sup>6</sup>A survivor can receive an annuity, but the annuity is at a significant discount.

<sup>7</sup> An eligible employee who has sufficient age and service to qualify for a retirement annuity under 40 ILCS 5/15-135 at the time he or she is first eligible to make the election described in subsection (a), may elect to participate in the traditional package or the portable benefit package, but may not elect to participate in the self-managed plan. (See 40 ILCS 5/15-134.5(c).) On information and belief, the late John McCord, had too many years of service to elect to take the self-managed plan, though he had the opportunity to elect the portable plan, and voluntarily chose to take the traditional (defined benefit) plan instead.

**ANSWER:** Defendants admit that Plaintiffs each elected one of three benefit packages for their pensions: a traditional benefit package, a portable pension package, or a self-managed plan. Defendants further admit that Paragraph 38 subsection (a) accurately describes the traditional benefit package and that Paragraph 38 subsection (c) accurately describes the self-managed pension plan. Defendants deny the remaining allegations in Paragraph 38. Defendants admit the allegations in Footnote 7, but deny the allegations in Footnotes 5 and 6.

39. Plaintiffs' choice to participate in any particular plan is voluntary and carries with it the relinquishment of benefits that may come with one or both of the other plans. The



relinquishment of one plan for another is therefore voluntary consideration and thus it vests contractual rights.

**ANSWER:** Defendants admit that Plaintiffs' choice to participate in any particular benefit package is voluntary. Defendants deny the remaining allegations in Paragraph 39.

40. Employees also have the right to "buy time" in the plan by voluntarily contributing extra money to SURS creating yet additional consideration which thereby vests contractual rights.

**ANSWER:** Paragraph 40 contains legal conclusions to which no answer is required.

41. Such contractual rights are protected by the Contracts Clause.

**ANSWER:** Paragraph 41 contains legal conclusions to which no answer is required.

42. The effects of PA 98-599 are to diminish the pensions that Plaintiffs receive and to breach their contractual rights in violation of the Contracts Clause.

**ANSWER:** Defendants deny the allegations in Paragraph 42.

43. The Takings Clause of the Illinois Constitution requires the State to compensate citizens for property it takes (eminent domain). It provides:

Private property shall not be taken or damaged for public use without just compensation as provided by law. Such compensation shall be determined by a jury as provided by law.

(Ill. Const. art I, §15.)

**ANSWER:** Defendants admit that Paragraph 43 accurately quotes Article I, Section 15 of the Illinois Constitution. The remainder of Paragraph 43 consists of legal conclusions to which no answer is required.

44. Over the years, the State chose not to fully fund SURS and other State Pension systems in spite of lawsuits filed by pensioners asking that the State be required to do so.

**ANSWER:** Defendants admit that multiple suits were filed alleging that the State had a legally enforceable obligation to provide greater funding to the state-financed public pension systems, and that in certain past years the General Assembly has contributed to the defendant retirement systems amounts less than the systems' actuaries said were necessary to cover the

estimated cost of the members' benefits for services during that year, as well as additional amounts necessary to achieve 100% or 90% funding over time. Defendants deny the remaining allegations of Paragraph 44 and, further answering, incorporate by reference the affirmative matter in defense of the Plaintiffs' claims asserted at the end of this pleading.

45. The result has been to create a financial crisis.

**ANSWER:** Defendants deny the allegations in Paragraph 45 and, further answering, incorporate by reference the affirmative matter in defense of the plaintiffs' claims asserted at the end of this pleading.

46. The purpose of PA 98-599 is to resolve (or at least mitigate) this financial crisis by decreasing the State's pension obligations.

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

47. In so doing, the State is effectively taking a property interest from Plaintiffs and SUAA members for a public purpose.

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

48. The State has not provided just compensation for taking this property interest.

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

49. In this case, as described hereafter, the diminishment of pension rights and increase in requirements to receive pension rights therefore constitutes an improper taking under the Takings Clause.

**ANSWER:** Defendants deny the allegations in Paragraph 49. Further answering, Defendants state that Plaintiffs' allegations that the Act violates the Takings Clause of the Illinois Constitution fail to state a valid claim because the affected interests under the Pension Code do not constitute a private property interest protected by the Takings Clause, the changes in those affected interests do not result in a compensable "taking," the financial impact of those changes is a necessary consequence of the regulatory scheme established by the legislature, and those changes do not unreasonably interfere with investment-backed expectations.

50. Members of SURS are currently entitled to a 3% Cost of Living Adjustment (COLA) on each year's annuity at January 1<sup>st</sup> of the following year.

**ANSWER:** Defendants admit that, prior to the adoption of Public Act 98-599, the Pension Code provided for a 3% Cost of Living Adjustment to each SURS member on each year's annuity at January 1 of the following year.

51. Under PA 98-599, starting with January 1, 2015, the annuity increase will be the *lesser* of 3% of the member's base annuity amount, or the number of years of the member's service multiplied by \$1000.<sup>8</sup>

<sup>8</sup> The \$1,000 per year of service will increase each year starting in 2016 each January 1<sup>st</sup> by the annual Consumer Price Index for the twelve months ending the preceding September. For purposes of this Complaint, those increases make no significant difference and for the sake of simplicity, this Complaint refers to that number as \$1,000.

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

52. The base annuity for many SURS members is higher than the product of their years of service times \$1,000.

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

53. As a result, many SURS members will face a diminishment, impairment and/or reduction in their expected pensions.

**ANSWER:** Defendants deny the allegations in Paragraph 53.

54. Under the pension code as it exists prior to PA 98-599, members of SURS are entitled to a 3% increase each January 1, which is compounded such that the 3% increase each year is based on the prior year's total annuity. (See pre-amendment 40 ILCS 5/14-136(d)). Thus, for example, for each \$1,000.00 of base annuity the annuitant would receive \$1,000.00 the first year, 1,030.00 the second, \$1,060.90 the third, \$1,092.73 the fourth year, etc.

**ANSWER:** Defendants admit that, prior to the adoption of PA 98-599, the Pension Code provided SURS annuitants with a 3% increase each January 1 that is compounded. Defendants admit the remaining allegations in Paragraph 54.

55. These annuity increases have been funded by the members during the course of their employment by an increase in their contributions.

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

56. The changes to the code made by PA 98-599 would make the 3% increase on the base annuity rather than on each year's compounded annuity. Thus, under PA 98-599, for each \$1,000 of annual annuity in the first year the annuitant would receive \$1,030 in the second year, \$1,060 in year three, \$1,090 in year four, etc.

**ANSWER:** Defendants deny the allegations in Paragraph 56 and, further answering, state that some SURS members would continue to receive 3% compounded automatic annual increases under Public Act 98-599.

57. While the difference starts out slowly, with the passage of time it becomes quite dramatic. By the 10<sup>th</sup> year of retirement the cumulative difference is only \$113.88 per \$1,000 of base annuity. But by the 20<sup>th</sup> year it is \$1,170.37 per \$1,000 of base annuity and by the 30<sup>th</sup> year it is \$4,525.42 per \$1,000 of base annuity. For a person with a \$60,000 base annual annuity, over the course of thirty years, that translates to a cumulative difference of \$271,525.20. (See the table below):

<b>Effect of Basing COLA on Original Annuity Versus Prior Year's Annuity For Each \$1,000 of Base Annuity</b>				
<u>Year No.</u>	<u>Pre-PA 95-599</u>	<u>Post-PA 98-599</u>	<u>Difference</u>	<u>Cumulative Difference</u>
1	1,000.00	1,000.00	0.00	
2	1,030.00	1,030.00	0.00	0.00
3	1,060.90	1,060.00	0.90	0.90
4	1,092.73	1,090.00	2.73	3.63
5	1,125.51	1,120.00	5.51	9.14
6	1,159.27	1,150.00	9.27	18.41
7	1,194.05	1,180.00	14.05	32.46
8	1,229.87	1,210.00	19.87	52.34
9	1,266.77	1,240.00	26.77	79.11
10	1,304.77	1,270.00	34.77	113.88
11	1,343.92	1,300.00	43.92	157.80
12	1,384.23	1,330.00	54.23	212.03

13	1,425.76	1,360.00	65.76	277.79
14	1,468.53	1,390.00	78.53	356.32
15	1,512.59	1,420.00	92.59	448.91
16	1,557.97	1,450.00	107.97	556.88
17	1,604.71	1,480.00	124.71	681.59
18	1,652.85	1,510.00	142.85	824.44
19	1,702.43	1,540.00	162.43	986.87
20	1,753.51	1,570.00	183.51	1,170.37
21	1,806.11	1,600.00	206.11	1,376.49
22	1,860.29	1,630.00	230.29	1,606.78
23	1,916.10	1,660.00	256.10	1,862.88
24	1,973.59	1,690.00	283.59	2,146.47
25	2,032.79	1,720.00	312.79	2,459.26
26	2,093.78	1,750.00	343.78	2,803.04
27	2,156.59	1,780.00	376.59	3,179.63
28	2,221.29	1,810.00	411.29	3,590.92
29	2,287.93	1,840.00	447.93	4,038.85
30	2,356.57	1,870.00	486.57	4,525.42

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

58. In addition to the loss of compounding COLA, many SURS members under PA 98-599 will also face a loss of their COLAs in certain years altogether as follows:

a. Members who retire after July 1, 2014 and who are 50 or older as of June 1, 2014 will not receive a COLA in year two of their retirement;

b. Members who retire after July 1, 2014 and who are ages 47-49 at as of June 1, 2014 will not receive a COLA in their second, fourth, and sixth years of retirement;

c. Members who retire after July 1, 2014 and who are ages 44-46 as of June 1, 2014 will not receive a COLA in their second, fourth, sixth, and eighth years of retirement; and

d. Members who retire after July 1, 2014 and who are younger than 44 as of June 1, 2014 will not receive a COLA in their second, fourth, sixth, eighth, and tenth years of retirement.

**ANSWER:** Defendants admit that, under P.A. 98-599, Tier I retirees who retire after July 1, 2014 will, depending on their age, be subject to one or more years in which they receive no annual COLA increase. Defendants further admit the allegations in Paragraph 58 subsections (a-d). Defendants deny the remaining allegations in Paragraph 58.

59. Although members will lose COLAs in various years depending upon their ages, members will not receive a refund of any portion of the increased contributions required to fund the COLA they are expecting to get.<sup>9</sup>

<sup>9</sup> In 1969, when the legislature added the COLA to the pension law, it also added a .5% to required contributions to fund them. PA 98-599 reduces the required contribution by 1%. However, it does not refund any portion of the .5% added in 1969. Thus, current employees have still paid more money over the years which are not returned to them, and annuitants (i.e. those who have already retired have not only paid the monies in the past, but are receiving no benefit from a reduced contribution in the future.)

**ANSWER:** Defendants admit that in 1969, the legislature passed changes to the Pension Code requiring members to contribute an additional 0.5% to the State Retirement Systems. Defendants further admit that P.A. 98-599 reduced active members' contributions by 1%. Defendants deny the remaining allegations in paragraph 59.

60. For an employee who began his employment with a state university, community college, or affiliated group prior to January 1, 2009, his annuity is calculated by a formula which factors in his salary during certain years.

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

61. For purposes of that calculation, PA 98-599 limits this result of that formula by reducing the salary in any year to the greater of his salary as of June 1, 2014 or \$109,971.00 (increased each year by a modest amount).

**ANSWER:** Defendants deny that the allegations in Paragraph 61 are a complete and accurate description of the pensionable salary cap in the Act.

62. This creates a statutory ceiling on what his pension annuity can be without regard to his earnings (and therefore without regard to his contributions which are based upon those earnings.) Thus, while there is a ceiling on his monthly annuity benefit, there is no ceiling on his monthly contribution requirement.

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

63. As a result, the greater the employee's salary, the more his pension costs him.

**ANSWER:** Defendants deny the allegations in Paragraph 63.

64. For purposes of calculating the lump sum payable at retirement of a member who elected the traditional (defined benefit) or portable plan, prior to PA 98-599, contributions by the member to SURS during the course of his employment are treated as though the member is receiving a rate of interest ("the effective rate of interest") based upon certain factors including:

- a. SURS' past and expected investment experience;
- b. historical and expected fluctuations in the market value of investments;
- c. the desirability of minimizing volatility in the effective rate of interest from year to year; and
- d. the provision of reserves for anticipated losses upon sales, redemptions, or other disposition of investments, and for variations in interest experience.

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

65. Historically this has resulted in a 7% to 10% rate over the last 30 years.

**ANSWER:** Defendants admit the allegations in Paragraph 65.

66. For 2014, the expected rate of interest is a 7% for 2014 and 7%-10% for the coming years using that calculation.

**ANSWER:** Defendants admit that the SURS Board has set the effective rate of interest for 2014 to be 7%. Defendants deny the remaining allegations in Paragraph 66.

67. Under PA 98-599, the effective rate of interest will no longer be based on the aforementioned factors and instead will be replaced by the 30 year U.S. Treasury bond rate at the beginning of the fiscal year in which the annuity is being paid, plus .75 basis points.

**ANSWER:** Defendants deny the allegations in Paragraph 67. Defendants further state that under PA 98-599, the effective rate of interest will instead will be replaced by the 30 year U.S. Treasury bond rate at the beginning of the fiscal year in which the annuity is being paid, plus 75 basis points.

68. The new formula provided by PA 98-599 requires employees to work an additional four months for each year a member is under the age of 46 on June 1, 2014, up to five years to receive his pension.<sup>10</sup>

<sup>10</sup> Thus, a person who is 31 years or younger as of June 1, 2014 will have to work 60 months (5 years) more than he would under the law as it existed before PA 98-599 — the law as it stood when he became vested in the plan.

**ANSWER:** Defendants admit that the benefit modifications in the Act include increases in the retirement age at which active members below the age of 46 are entitled to receive a pension, that those increases, in four-month increments up to a maximum of five years, are lowest for the oldest active members and are progressively greater for younger active members. Defendants further admit that a person who is 31 years or younger as of June 1, 2014 will have to work 60 months more than she would have under the law as it existed before P.A. 98-599. Defendants lack knowledge sufficient to form a belief regarding the remaining allegations in Footnote 10 and therefore deny those allegations.

69. By forcing a SURS member to work longer before receiving the pension benefits, the new formula diminishes the pension and/or increases its costs in three important ways:

a. This new formula diminishes the value of the pension by making the employee work longer to earn the pension.

b. Because the employee makes contributions to SURS each year he is employed and he now has to work more years to retire, this has the effect of making him pay more money into SURS. Thus this new formula increases the financial cost of his pension.

c. For the SURS member who selects the traditional (defined benefit) pension plan, because he is not receiving the annuity in the additional years he must now work, the total number of years for which he collects the annuity is diminished and so concomitantly is the total value of that annuity.



**ANSWER:** Defendants deny the allegations in Paragraph 69.

**COUNT I(A) — COLA FORMULA**

70. Plaintiffs restate and re-allege paragraphs 1 through 69, as paragraph 70 of this Count I(a).

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

71. By virtue of the foregoing, members of SURS, who are currently employed and whose annuity at year one of retirement is more than the product of their years in service times \$1,000, will receive a smaller COLA under PA 98-599 than under the law as it stood at the time they became vested, thereby diminishing their pensions.

**ANSWER:** Defendants deny the allegations in Paragraph 71.

72. Plaintiff SUAA represents members for whom their number of years of service multiplied by \$1,000 results in a figure less than their calculated base annuity at year one of retirement. These members therefore suffer the consequence of having their COLA calculated at a lower rate.

**ANSWER:** On information and belief, Defendants admit that some SUAA members have a number of years of service multiplied by \$1,000 that results in a figure less than their calculated base annuity in the first year of their retirement. Defendants deny the remaining allegations of paragraph 72 and, further answering, deny that SUAA is a proper representative or has standing to represent all of its members with respect to the claims and relief at issue in this suit.

73. Plaintiff, Joyce Beasley, has 10 years of service. Her COLA prior to PA 98-599 would have been based upon her annuity. However, under PA 98-599, because her first year (base) annuity is more than \$10,000, her COLA will be lower than under the law as it stood at the time she became vested in her pension.

**ANSWER:** Defendants deny that Ms. Beasley had 10 years of service and further state that she had 11 years of service credit with SURS. Defendants admit the remaining allegations in Paragraph 73.

74. Plaintiff Bruce Busboom, has 28 years of service. His COLA prior to PA 98-599 would have been based upon his annuity. However, under PA 98-599 because his first year (base) annuity is more than \$28,000, his COLA will be lower than under the law as it stood at the time he became vested in his pension.

**ANSWER:** Defendants admit the allegations in Paragraph 71.

75. Plaintiff, Oliver Clark, had 10 years of service. Although he elected the portable plan, at retirement he chose to take a defined benefit. His COLA would have been based upon his annuity. However, under PA 98-599 his COLA will be lower than under the law as it stood at the time he became vested in his pension.

**ANSWER:** Defendants deny that Mr. Clark had 10 years of service. Defendants further state that Mr. Clark had approximately 11 years of service and purchased 6.75 years of additional service credit with SURS. Defendants admit the remaining allegations in Paragraph 75.

76. Plaintiff, Maureen McCord's husband, had 40 years of service. Her COLA prior to PA 98-599 would have been based upon her annuity. However, under PA 98-599, because her husband's first year (base) annuity is more than \$40,000, her COLA will be lower than under the law as it stood at the time her husband became vested in his (now her) pension.

**ANSWER:** Defendants deny that Mr. McCord had 40 years of service and further state that he had 32 years of service. Defendants admit the remaining allegations in Paragraph 76.

77. By virtue of the foregoing, the State has diminished the Plaintiffs' pensions and is therefore in violation of the Pension Clause of the Illinois Constitution.

**ANSWER:** Defendants deny the allegations in Paragraph 77.

78. By its terms, the section of PA 98-599 which diminishes Plaintiffs' pensions by changing the COLA formula, is non-severable. A finding that it is unconstitutional therefore requires a finding that the entire Act is unconstitutional.

**ANSWER:** Defendants deny the allegations in Paragraph 78.

#### **COUNT I(B) — COLA FORMULA**

79. Plaintiffs restate and reallege paragraphs 70 through 78, as paragraph 79 of this Count I(b).

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

80. By virtue of the foregoing, Plaintiffs Joyce Beasley, Bruce Busboom, Oliver Clark, and Maureen McCord, as well as most of SUAA's members, have a contractual right to receive a COLA calculated on the basis of their annuity.

**ANSWER:** Defendants deny the allegations in Paragraph 80.

81. By virtue of the foregoing, members of SURS who are currently employed and whose annuity at year one of retirement is more than the product of their years in service times \$1,000 will receive a smaller COLA under PA 98-599 than under the law as it stood at the time they became vested thereby diminishing their pensions.

**ANSWER:** Defendants deny the allegations in Paragraph 81.

82. Plaintiff SUAA represents members for whom their number of years of service multiplied by \$1,000 results in a figure less than their calculated base annuity at year one of retirement. These members therefore suffer the consequence of having their COLA calculated at a lower rate.

**ANSWER:** On information and belief, Defendants admit that some SUAA members have a number of years of service multiplied by \$1,000 that results in a figure less than their calculated base annuity in the first year of their retirement. Defendants deny the remaining allegations of paragraph 82 and, further answering, deny that SUAA is a proper representative or has standing to represent all of its members with respect to the claims and relief at issue in this suit.

83. Plaintiff, Joyce Beasley, has 10 years of service. Her COLA prior to PA 98-599 would have been based upon her annuity. However, under PA 98-599 because her first year (base) annuity is more than \$10,000, her COLA will be lower than under the law as it stood at the time she became vested in her pension.

**ANSWER:** Defendants deny that Ms. Beasley had 10 years of service and further state that she had 11 years of service credit with SURS. Defendants admit the remaining allegations in Paragraph 83.

84. Plaintiff Bruce Busboom, has 28 years of service. His COLA prior to PA 98-599 would have been based upon his annuity. However, under PA 98-599 because his first year (base) annuity is more than \$28,000, his COLA will be lower than under the law as it stood at the time he became vested in his pension.

**ANSWER:** Defendants admit the allegations in Paragraph 84.

85. Plaintiff, Oliver Clark, had 10 years of service. Although he elected the portable plan, at retirement he chose to take a defined benefit. His COLA would have been based upon his annuity. However, under PA 98-599 his COLA will be lower than under the law as it stood at the time he became vested in his pension.

**ANSWER:** Defendants deny that Mr. Clark had 10 years of service. Defendants further state that Mr. Clark had approximately 11 years of service and purchased 6.75 years of additional service credit with SURS. Defendants admit the remaining allegations in Paragraph 85.

86. Plaintiff, Maureen McCord's husband, had 40 years of service. Her COLA prior to PA 98-599 would have been based upon her annuity. However, under PA 98-599 because her husband's first year (base) annuity is more than \$40,000, her COLA will be lower than under the law as it stood at the time her husband became vested in her pension.

**ANSWER:** Defendants deny that Mr. McCord had 40 years of service and further state that he had 32 years of service. Defendants admit the remaining allegations in Paragraph 86.

87. By virtue of the foregoing, the State has breached a contract with Plaintiffs, and has therefore violated the Contracts Clause of the Illinois Constitution.

**ANSWER:** Defendants deny the allegations in Paragraph 87.

88. By its terms, the section of PA 98-599 which breaches contracts with Plaintiffs by changing the COLA formula, is non-severable and a finding that it is unconstitutional therefore requires a finding that the entire Act is unconstitutional in application to the Plaintiffs.

**ANSWER:** Defendants deny the allegations in Paragraph 88.

#### **COUNT I(C) — COLA FORMULA**

89. Plaintiffs restate and reallege paragraphs 79 through 88 as paragraph 89 of this Count I(c).

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

90. By virtue of the foregoing, members of SURS who are currently employed have a property interest in having their COLAs calculated based on their salaries without a statutory cap.

**ANSWER:** Defendants deny the allegations in Paragraph 90.

91. By virtue of the foregoing, members of SURS who are currently employed and whose annuity at year one of retirement is more than the product of their years in service times \$1,000 will receive a smaller COLA under PA 98-599 than under the law as it stood at the time they became vested, thereby diminishing their pensions.

**ANSWER:** Defendants deny the allegations in Paragraph 91.

92. Plaintiff SUAA represents members for whom their number of years of service multiplied by \$1,000 results in a figure less than their calculated base annuity at year one of retirement. These members therefore suffer the consequence of having their COLA calculated at a lower rate.

**ANSWER:** On information and belief, Defendants admit that some SUAA members have a number of years of service multiplied by \$1,000 that results in a figure less than their calculated base annuity in the first year of their retirement. Defendants deny the remaining allegations of paragraph 92 and, further answering, deny that SUAA is a proper representative or has standing to represent all of its members with respect to the claims and relief at issue in this suit.

93. Plaintiff, Joyce Beasley, has 10 years of service. Her COLA prior to PA 98-599 would have been based upon her annuity. However, under PA 98-599, because her first year (base) annuity is more than \$10,000, her COLA will be lower than under the law as it stood at the time she became vested in her pension.

**ANSWER:** Defendants deny that Ms. Beasley had 10 years of service and further state that she had 11 years of service credit with SURS. Defendants admit the remaining allegations in Paragraph 93.

94. Plaintiff Bruce Busboom, has 28 years of service. His COLA prior to PA 98-599 would have been based upon his annuity. However, under PA 98-599, because his first year (base) annuity is more than \$28,000, his COLA will be lower than under the law as it stood at the time he became vested in his pension.

**ANSWER:** Defendants admit the allegations in Paragraph 94.

95. Plaintiff, Oliver Clark, had 10 years of service. Although he elected the portable plan, at retirement he chose to take a defined benefit. His COLA would have been based upon his annuity. However, under PA 98-599 his COLA will be lower than under the law as it stood at the time he became vested in his pension.

**ANSWER:** Defendants deny that Mr. Clark had 10 years of service. Defendants further state that Mr. Clark had approximately 11 years of service and purchased 6.75 years of additional service credit with SURS. Defendants admit the remaining allegations in Paragraph 95.

96. Plaintiff, Maureen McCord's husband, had 40 years of service. Her COLA prior to PA 98-599 would have been based upon her annuity. However, under PA 98-599 because her

husband's first year (base) annuity is more than \$40,000, her COLA will be lower than under the law as it stood at the time her husband became vested in his (now her) pension.

**ANSWER:** Defendants deny that Mr. McCord had 40 years of service and further state that he had 32 years of service. Defendants admit the remaining allegations in Paragraph 96.

97. The State's purpose in depriving Plaintiffs of their property interest in the calculation of their COLAs is to reduce the State's pension obligations and thus it is for a public purpose.

**ANSWER:** Defendants deny the allegations in Paragraph 97.

98. The State has not provided just compensation to Plaintiffs for this taking.

**ANSWER:** Defendants deny the allegations in Paragraph 98.

99. This taking thus violates the Takings Clause of the Illinois Constitution.

**ANSWER:** Defendants deny the allegations in Paragraph 99.

100. By its terms, the section of PA 98-599 which deprives Plaintiffs of a property interest in their pensions by changing the COLA formula is non-severable and a finding that it is unconstitutional therefore requires a finding that the entire Act is unconstitutional.

**ANSWER:** Defendants deny the allegations in Paragraph 100.

#### **COUNT II(A) — COMPOUND COLA**

101. Plaintiffs restate and reallege paragraphs 1 through 69, as paragraph 101 of this Count II(a).

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

102. By virtue of the foregoing, members of SURS who became vested prior to enactment of PA 98-599 will lose their COLA compounding under PA 98-599.

**ANSWER:** Defendants deny the allegations in Paragraph 102.

103. Plaintiff SUAA represents members of SURS who selected the traditional (defined benefit plan) and who were receiving, or expected upon retirement to receive, the compounded COLA. Those members will suffer the loss of the compounding COLA under PA 98-599.

**ANSWER:** On information and belief, Defendants admit that some SUAA members who selected the traditional plan and were receiving, or expected upon retirement to receive, a

compounded COLA. Defendants deny the remaining allegations of paragraph 103 and, further answering, deny that SUAA is a proper representative or has standing to represent all of its members with respect to the claims and relief at issue in this suit.

104. Plaintiff, Joyce Beasley, selected the traditional (defined benefit) pension plan. She retired in 2005. She was receiving a compounding COLA each year. She will suffer the loss of the compounding COLA under PA 98-599.

**ANSWER:** Defendants admit that Ms. Beasley retired in 2005 and that Ms. Beasley was receiving a 3% COLA that was compounded with previous increases. Defendants further admit that under Public Act 98-599 her COLA will no longer be compounded with previous increases. Defendants deny that Ms. Beasley selected the traditional benefit plan, and further state that Ms. Beasley selected the portable benefit plan. Defendants deny the remainder of Paragraph 104.

105. Plaintiff Bruce Busboom, selected the traditional (defined benefit) pension plan. He retired in 2007. He was receiving a compounding COLA each year. He will suffer the loss of the compounding COLA under PA 98-599.

**ANSWER:** Defendants admit that Mr. Busboom selected the traditional pension plan and that Mr. Busboom was receiving a 3% COLA that was compounded with previous increases. Defendants further admit that under Public Act 98-599 his COLA will no longer be compounded with previous increases. Defendants deny that Mr. Busboom retired in 2007 and further state that Mr. Busboom retired in 2008. Defendants deny the remainder of Paragraph 105.

106. Plaintiff, Oliver Clark, elected the portable plan, however, at retirement he chose to take a defined benefit. He was receiving a compounding COLA each year. He will suffer the loss of the compounding COLA under PA 98-599.

**ANSWER:** Defendants admit that Mr. Clark elected the portable plan and that he chose to take a defined benefit at retirement. Defendants admit that Mr. Clark was receiving a 3% COLA that was compounded with previous increases. Defendants further admit that under Public Act 98-599 his COLA will no longer be compounded with previous increases. Defendants deny the remaining allegations in Paragraph 106.

107. Plaintiff, Aimee Densmore is currently employed by Parkland Community College. She selected the traditional (defined benefit) pension plan and is vested in it. Upon retirement, she expects to receive a monthly annuity with a COLA each year based upon the prior year's annuity (i.e. compounded.) She will suffer the loss of the compounding COLA under PA 98-599.

**ANSWER:** Defendants admit that Ms. Densmore is currently employed by Parkland Community College, that she selected the traditional pension plan, and that she is vested in it. Defendants lack knowledge sufficient to form a belief regarding the remaining allegations in Paragraph 107 and therefore deny those allegations.

108. Plaintiff, Maureen McCord's husband, had 40 years of service. Her husband selected the traditional (defined benefit) pension plan. He retired in 1999. He was receiving a compounding COLA each year. Upon his death in 2011, as his survivor, she began receiving his pension and was receiving a compounding COLA each year. She will suffer the loss of the compounding COLA under PA 98-599.

**ANSWER:** Defendants admit that Mr. McCord retired in 1999, that he selected the traditional pension plan, and that he previously received a 3% COLA that was compounded with previous increases. Defendants further admit that, upon Mr. McCord's death in 2011, Ms. McCord began receiving his pension and that she received a 3% COLA that was compounded with previous increases. Defendants further admit that under Public Act 98-599 Ms. McCord's COLA will no longer be compounded with previous increases. Defendants deny that Mr. McCord had 40 years of service and further state that he had 32 years of service. Defendants deny the remaining allegations in Paragraph 108.

109. Plaintiff Richie Pankau, is currently employed by UIUC as a refrigeration mechanic and pipefitter. He selected the traditional (defined benefit) pension plan and is vested in it. Upon retirement, he expects to receive a monthly annuity with a COLA each year based upon the prior year's annuity (i.e. compounded.) He will suffer the loss of the compounding COLA under PA 98-599.

**ANSWER:** Defendants admit that Mr. Pankau is currently employed by UIUC, that he selected the traditional benefit plan, and that he is vested in it. Defendants lack knowledge



sufficient to form a belief regarding the remaining allegations in Paragraph 109 and therefore deny those allegations.

110. Plaintiff, Yvonne Sergent, is currently employed by UIUC as an administrative assistant. She selected the traditional (defined benefit) pension plan and is vested in it. Upon her retirement, she expects to receive a monthly annuity with a COLA each year based upon the prior year's annuity (i.e. compounded.) Under PA 98-599, she will suffer the loss of the compounding COLA when she retires.

**ANSWER:** Defendants admit that Ms. Sergent is currently employed by UIUC, that she selected the traditional benefit plan, and that she is vested in it. Defendants lack knowledge sufficient to form a belief regarding the remaining allegations in Paragraph 110 and therefore deny those allegations.

111. By virtue of the foregoing, the State has diminished the Plaintiffs' pensions and is therefore in violation of the Pension Clause of the Illinois Constitution.

**ANSWER:** Defendants deny the allegations in Paragraph 111.

112. By its terms, the section of PA 98-599 which diminishes Plaintiffs' pensions by depriving them of the COLA compounding, is non-severable and a finding that it is unconstitutional requires a finding that the entire Act is unconstitutional.

**ANSWER:** Defendants deny the allegations in Paragraph 112.

### **COUNT II(B) — COMPOUND COLA**

113. Plaintiffs restate and reallege paragraphs 101 through 112, as paragraph 113 of this Count II(b).

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

114. By virtue of the foregoing, Plaintiffs Joyce Beasley, Bruce Busboom, Oliver Clark, Aimee Densmore, Maureen McCord, Richie Pankau and Yvonne Sergent, as well as most of SUAA's members, have a contractual right to their COLAs each year based upon the prior year's annuity (i.e. a compounding COLA).

**ANSWER:** Defendants deny the allegations in Paragraph 114.

115. By virtue of the foregoing, members of SURS, who became vested prior to enactment of PA 98-599, will lose their COLA compounding under PA 98-599.

**ANSWER:** Defendants deny the allegations in Paragraph 115.

116. Plaintiff SUAA represents members of SURS who selected the traditional (defined benefit plan) and who were getting, or expected upon retirement to receive, the compounded COLA. Those members will suffer the loss of the compounding COLA under PA 98-599.

**ANSWER:** On information and belief, Defendants admit that some SUAA members who selected the traditional plan and were receiving, or expected upon retirement to receive, a compounded COLA. Defendants deny the remaining allegations of paragraph 116 and, further answering, deny that SUAA is a proper representative or has standing to represent all of its members with respect to the claims and relief at issue in this suit.

117. Plaintiff, Joyce Beasley, selected the traditional (defined benefit) pension plan. She retired in 2005. She was receiving a compounding COLA each year. She will suffer the loss of the compounding COLA under PA 98-599.

**ANSWER:** Defendants admit that Ms. Beasley retired in 2005 and that Ms. Beasley was receiving a 3% COLA that was compounded with previous increases. Defendants further admit that under Public Act 98-599 her COLA will no longer be compounded with previous increases. Defendants deny that Ms. Beasley selected the traditional benefit plan, and further state that Ms. Beasley selected the portable benefit plan. Defendants deny the remainder of Paragraph 117.

118. Plaintiff Bruce Busboom, selected the traditional (defined benefit) pension plan. He retired in 2007. He was receiving a compounding COLA each year. He will suffer the loss of the compounding COLA under PA 98-599.

**ANSWER:** Defendants admit that Mr. Busboom selected the traditional pension plan and that Mr. Busboom was receiving a 3% COLA that was compounded with previous increases. Defendants further admit that under Public Act 98-599 his COLA will no longer be compounded with previous increases. Defendants deny that Mr. Busboom retired in 2007 and further state that Mr. Busboom retired in 2008. Defendants deny the remainder of Paragraph 118.

119. Plaintiff, Oliver Clark, elected the portable plan, however, at retirement he chose to take a defined benefit. He was receiving a compounding COLA each year. He will suffer the loss of the compounding COLA under PA 98-599.

**ANSWER:** Defendants admit that Mr. Clark elected the portable plan and that he chose to take a defined benefit at retirement. Defendants admit that Mr. Clark was receiving a 3% COLA that was compounded with previous increases. Defendants further admit that under Public Act 98-599 his COLA will no longer be compounded with previous increases. Defendants deny the remaining allegations in Paragraph 119.

120. Plaintiff, Aimee Densmore is currently employed by Parkland Community College. She selected the traditional (defined benefit) pension plan and is vested in it. Upon retirement, she expects to receive a monthly annuity with a COLA each year based upon the prior year's annuity (i.e. compounded.). She will suffer the loss of the compounding COLA under PA 98-599.

**ANSWER:** Defendants admit that Ms. Densmore is currently employed by Parkland Community College, that she selected the traditional pension plan, and that she is vested in it. Defendants lack knowledge sufficient to form a belief regarding the remaining allegations in Paragraph 120 and therefore deny those allegations.

121. Plaintiff, Maureen McCord's husband had 40 years of service. Her husband selected the traditional (defined benefit) pension plan. He retired in 2003. He was receiving a compounding COLA each year. Upon his death in 2011, as his survivor, she began receiving his pension and she was receiving a compounding COLA each year. She will suffer the loss of the compounding COLA under PA 98-599.

**ANSWER:** Defendants admit that Mr. McCord retired in 1999, that he selected the traditional pension plan, and that he previously received a 3% COLA that was compounded with previous increases. Defendants further admit that, upon Mr. McCord's death in 2011, Ms. McCord began receiving his pension and that she received a 3% COLA that was compounded with previous increases. Defendants finally admit that under Public Act 98-599 Ms. McCord's COLA will no longer be compounded with previous increases. Defendants deny that Mr. McCord had 40 years of service and further state that he had 32 years of service. Defendants deny the remaining allegations in Paragraph 121.

122. Plaintiff Richie Pankau, is currently employed by UIUC as a refrigeration mechanic and pipefitter. He selected the traditional (defined benefit) pension plan and is vested in it. Upon retirement, he expects to receive a monthly annuity with a COLA each year based upon the prior year's annuity (i.e. compounded.) He will suffer the loss of the compounding COLA under PA 98-599.

**ANSWER:** Defendants admit that Mr. Pankau is currently employed by UIUC, that he selected the traditional benefit plan, and that he is vested in it. Defendants lack knowledge sufficient to form a belief regarding the remaining allegations in Paragraph 122 and therefore deny those allegations.

123. Plaintiff, Yvonne Sergent, is currently employed by UIUC as an administrative assistant. She selected the traditional (defined benefit) pension plan and is vested in it. Upon retirement she expects to receive a monthly annuity with a COLA each year based upon the prior year's annuity (i.e. compounded.) Under PA 98-599, she will suffer the loss of the compounding COLA when she retires.

**ANSWER:** Defendants admit that Ms. Sergent is currently employed by UIUC, that she selected the traditional benefit plan, and that she is vested in it. Defendants lack knowledge sufficient to form a belief regarding the remaining allegations in Paragraph 123 and therefore deny those allegations.

124. By virtue of the foregoing, the State has breached a contract with Plaintiffs, and has therefore violated the Contracts Clause of the Illinois Constitution.

**ANSWER:** Defendants deny the allegations in Paragraph 124.

125. By its terms, the section of PA 98-599, which breaches contracts made with the Plaintiffs by depriving them of the COLA compounding, is non-severable and a finding that it is unconstitutional therefore requires a finding that the entire Act is unconstitutional in application to the Plaintiffs.

**ANSWER:** Defendants deny the allegations in Paragraph 125.

#### **COUNT II(C) — COMPOUND COLA**

126. Plaintiffs restate and reallege paragraphs 113 through 125 as paragraph 126 of this Count II(c).

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

127. By virtue of the foregoing, members of SURS who became vested prior to enactment of PA 98-599 will lose their COLA compounding under PA 98-599.

**ANSWER:** Defendants deny the allegations in Paragraph 127.

128. Plaintiff SUAA represents members of SURS who selected the traditional (defined benefit plan) and who were getting or expected upon retirement to receive the compounded COLA. Those members will suffer the loss of the compounding COLA under PA 98-599.

**ANSWER:** On information and belief, Defendants admit that some SUAA members who selected the traditional plan and were receiving, or expected upon retirement to receive, a compounded COLA. Defendants deny the remaining allegations of paragraph 128 and, further answering, deny that SUAA is a proper representative or has standing to represent all of its members with respect to the claims and relief at issue in this suit..

129. Plaintiff, Joyce Beasley, selected the traditional (defined benefit) pension plan. She retired in 2005. She was receiving a compounding COLA each year. She will suffer the loss of the compounding COLA under PA 98-599.

**ANSWER:** Defendants admit that Ms. Beasley retired in 2005 and that Ms. Beasley was receiving a 3% COLA that was compounded with previous increases. Defendants further admit that under Public Act 98-599 her COLA will no longer be compounded with previous increases. Defendants deny that Ms. Beasley selected the traditional benefit plan, and further state that Ms. Beasley selected the portable benefit plan. Defendants deny the remainder of Paragraph 129.

130. Plaintiff Bruce Busboom, selected the traditional (defined benefit) pension plan. He retired in 2007. He was receiving a compounding COLA each year. He will suffer the loss of the compounding COLA under PA 98-599.

**ANSWER:** Defendants admit that Mr. Busboom selected the traditional pension plan and that Mr. Busboom was receiving a 3% COLA that was compounded with previous increases. Defendants further admit that under Public Act 98-599 his COLA will no longer be compounded with previous increases. Defendants deny that Mr. Busboom retired in 2007 and further state that Mr. Busboom retired in 2008. Defendants deny the remainder of Paragraph 130.

131. Plaintiff, Oliver Clark, elected the portable plan, however, at retirement he chose to take a defined benefit. He was receiving a compounding COLA each year. He will suffer the loss of the compounding COLA under PA 98-599.

**ANSWER:** Defendants admit that Mr. Clark elected the portable plan and that he chose to take a defined benefit at retirement. Defendants admit that Mr. Clark was receiving a 3% COLA that was compounded with previous increases. Defendants further admit that under Public Act 98-599 his COLA will no longer be compounded with previous increases. Defendants deny the remaining allegations in Paragraph 131.

132. Plaintiff, Aimee Densmore is currently employed by Parkland Community College. She selected the traditional (defined benefit) pension plan and is vested in it. Upon retirement, she expects to receive a monthly annuity with a COLA each year based upon the prior year's annuity (i.e. compounded.). She will suffer the loss of the compounding COLA under PA 98-599.

**ANSWER:** Defendants admit that Ms. Densmore is currently employed by Parkland Community College, that she selected the traditional pension plan, and that she is vested in it. Defendants lack knowledge sufficient to form a belief regarding the remaining allegations in Paragraph 132 and therefore deny those allegations.

133. Plaintiff, Maureen McCord's husband, had 40 years of service. Her husband selected the traditional (defined benefit) pension plan. He retired in 2003. He was receiving a compounding COLA each year. Upon his death in 2011, as his survivor, she began receiving his pension and she was receiving a compounding COLA each year. She will suffer the loss of the compounding COLA under PA 98-599.

**ANSWER:** Defendants admit that Mr. McCord retired in 1999, that he selected the traditional pension plan, and that he previously received a 3% COLA that was compounded with previous increases. Defendants further admit that, upon Mr. McCord's death in 2011, Ms. McCord began receiving his pension and that she received a 3% COLA that was compounded with previous increases. Defendants further admit that under Public Act 98-599 Ms. McCord's COLA will no longer be compounded with previous increases. Defendants deny that Mr. McCord had 40 years

of service and further state that he had 32 years of service. Defendants deny the remaining allegations in Paragraph 133.

134. Plaintiff Richie Pankau, is currently employed by UIUC as a refrigeration mechanic and pipefitter. He selected the traditional (defined benefit) pension plan and is vested in it. Upon retirement, he expects to receive a monthly annuity with a COLA each year based upon the prior year's annuity (i.e. compounded.) He will suffer the loss of the compounding COLA under PA 98-599.

**ANSWER:** Defendants admit that Mr. Pankau is currently employed by UIUC, that he selected the traditional benefit plan, and that he is vested in it. Defendants lack knowledge sufficient to form a belief regarding the remaining allegations in Paragraph 134 and therefore deny those allegations.

135. Plaintiff, Yvonne Sergent, is currently employed by UIUC as an administrative assistant. She selected the traditional (defined benefit) pension plan and is vested in it. Upon retirement she expects to receive a monthly annuity with a COLA each year based upon the prior year's annuity (i.e. compounded.). Under PA 98-599, she will suffer the loss of the compounding COLA when she retires.

**ANSWER:** Defendants admit that Ms. Sergent is currently employed by UIUC, that she selected the traditional benefit plan, and that she is vested in it. Defendants lack knowledge sufficient to form a belief regarding the remaining allegations in Paragraph 135 and therefore deny those allegations.

136. The State's purpose in depriving Plaintiffs of their property interest in the compounding of COLAs is to reduce the State's pension obligations and thus it is for a public purpose.

**ANSWER:** Defendants deny the allegations in Paragraph 136.

137. The State has not provided just compensation to Plaintiffs for this taking.

**ANSWER:** Defendants deny the allegations in Paragraph 137.

138. This taking thus violates the Takings Clause of the Illinois Constitution.

**ANSWER:** Defendants deny the allegations in Paragraph 138.

139. By its terms, the section of PA 98-599 which deprives Plaintiffs of a property interest by depriving them of the COLA compounding is non-severable and a finding that it is unconstitutional therefore requires a finding that the entire Act is unconstitutional.

**ANSWER:** Defendants deny the allegations in Paragraph 139.

**COUNT III(A) —COLA SKIPS**

140. Plaintiffs restate and reallege paragraphs 1 through 69 as paragraph 140 of this Count III(a).

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

141. By virtue of the foregoing, members of SURS who are current employees had a right to COLAs in every year of retirement at the time they became vested in their pensions, and pursuant to PA 98-599 will lose their COLAs in certain years.

**ANSWER:** Defendants deny the allegations in Paragraph 141.

142. SUAA represents numerous members of SURS who are current employees of a State University, Community College, or other affiliate group, who are vested in the traditional (defined benefit) pension plan. Under PA 98-599 these members will be deprived of their COLAs in one or more years of their retirement.

**ANSWER:** On information and belief, Defendants admit that some SUAA members who selected the traditional plan will receive one or more 0% COLAs during their retirement under PA 98-599. Defendants deny the remaining allegations of paragraph 142 and, further answering, deny that SUAA is a proper representative or has standing to represent all of its members with respect to the claims and relief at issue in this suit.

143. Plaintiff Aimee Densmore is a current employee of Parkland Community College who is under the age of 43 and who is vested in the traditional (defined benefit) plan. Under PA 98-599 she will be deprived of her COLA in the second, fourth, sixth, eighth, and tenth years of her retirement.

**ANSWER:** Defendants admit that Ms. Densmore is a current employee of Parkland Community College who is under the age of 43 and who is vested in the traditional plan. Defendants further admit that, under Public Act 98-599, Ms. Densmore will receive a 0% COLA



on the second, fourth, sixth, eighth, and tenth years of her retirement. Defendants deny the remaining allegations in Paragraph 143.

144. Plaintiff Richie Pankau is a current employee of UIUC who is over the age of 50 and who is vested in the traditional (defined benefit) plan. Under PA 98-599 he will be deprived of his COLA in the second year of his retirement.

**ANSWER:** Defendants admit that Mr. Pankau is a current employee of UIUC who is over the age of 50 and who is vested in the traditional plan. Defendants further admit that, under Public Act 98-599, Mr. Pankau will receive a 0% COLA in the second year of his retirement. Defendants deny the remaining allegations in Paragraph 144.

145. Plaintiff Yvonne Sergent is a current employee of UIUC who is over the age of 50 and who is vested in the traditional (defined benefit) plan. Under PA 98-599 she will be deprived of her COLA in the second year of her retirement.

**ANSWER:** Defendants admit that Ms. Sergent is a current employee of UIUC who is over the age of 50 and who is vested in the traditional plan. Defendants further admit that, under Public Act 98-599, Ms. Sergent will receive a 0% COLA in the second year of her retirement. Defendants deny the remaining allegations in Paragraph 144.

146. By virtue of the foregoing, the State has diminished the Plaintiffs' pensions and is therefore in violation of the Pension Clause of the Illinois Constitution.

**ANSWER:** Defendants deny the allegations in Paragraph 146.

147. By its terms, the section of PA 98-599 which diminishes Plaintiffs' pensions by denying them COLAs in certain years, is non-severable and a finding that it is unconstitutional therefore requires a finding that the entire Act is unconstitutional.

**ANSWER:** Defendants deny the allegations in Paragraph 147.

### **COUNT III(B) —COLA SKIPS**

148. Plaintiffs restate and reallege paragraphs 140 through 147 as paragraph 148 of this Count III(b).

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

149. By virtue of the foregoing, Plaintiffs Aimee Densmore, Richie Pankau, and Yvonne Sergent, as well as most of SUAA's members, have a contractual right to their COLAs every year of their retirements.

**ANSWER:** Defendants deny the allegations in Paragraph 149

150. By virtue of the foregoing, members of SURS who are current employees had a right to COLAs in every year of retirement at the time they became vested in their pensions, will lose COLAs in certain years.

**ANSWER:** Defendants deny the allegations in Paragraph 150.

151. SUAA represents numerous members of SURS who are current employees of a State University, Community College, or other affiliated group, who are vested in the traditional (defined benefit) pension plan. Under PA 98-599 these members will be deprived of their COLAs in one or more years of their retirement.

**ANSWER:** On information and belief, Defendants admit that some SUAA members who selected the traditional plan will receive one or more 0% COLAs during their retirement under PA 98-599. Defendants deny the remaining allegations of paragraph 151 and, further answering, deny that SUAA is a proper representative or has standing to represent all of its members with respect to the claims and relief at issue in this suit.

152. Plaintiff Aimee Densmore is a current employee of Parkland Community College who is under the age of 43 and who is vested in the traditional (defined benefit) plan. Under PA 98-599, she will be deprived of her COLA in the second, fourth, sixth, eighth, and tenth years of her retirement.

**ANSWER:** Defendants admit that Ms. Densmore is a current employee of Parkland Community College who is under the age of 43 and who is vested in the traditional plan. Defendants further admit that, under Public Act 98-599, Ms. Densmore will receive a 0% COLA on the second, fourth, sixth, eighth, and tenth years of her retirement. Defendants deny the remaining allegations in Paragraph 152.

153. Plaintiff Richie Pankau is a current employee of the UIUC who is over the age of 50 and who is vested in the traditional (defined benefit) plan. Under PA 98-599 he will be deprived of his COLA in the second year of his retirement.

**ANSWER:** Defendants admit that Mr. Pankau is a current employee of UIUC who is over the age of 50 and who is vested in the traditional plan. Defendants further admit that, under Public Act 98-599, Mr. Pankau will receive a 0% COLA in the second year of his retirement. Defendants deny the remaining allegations in Paragraph 153.

154. Plaintiff Yvonne Sergent is a current employee of UIUC who is over the age of 50 and who is vested in the traditional (defined benefit) plan. Under PA 98-599, she will be deprived of her COLA in the second year of her retirement.

**ANSWER:** Defendants admit that Ms. Sergent is a current employee of UIUC who is over the age of 50 and who is vested in the traditional plan. Defendants further admit that, under Public Act 98-599, Ms. Sergent will receive a 0% COLA in the second year of her retirement. Defendants deny the remaining allegations in Paragraph 154.

155. By virtue of the foregoing, the State has breached a contract with Plaintiffs, and has therefore violated the Contracts Clause of the Illinois Constitution.

**ANSWER:** Defendants deny the allegations in Paragraph 155.

156. By its terms, the section of PA 98-599 which breaches contracts with the Plaintiffs by denying them COLAs in certain years is non-severable and a finding that it is unconstitutional therefore requires a finding that the entire Act is unconstitutional in application.

**ANSWER:** Defendants deny the allegations in Paragraph 156.

### **COUNT III(C) —COLA SKIPS**

157. Plaintiffs restate and reallege paragraphs 148 through 156 as paragraph 157 of this Count III(c).

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

158. By virtue of the foregoing, members of SURS who are current employees have a property interest in their COLAs in every year of their retirements.

**ANSWER:** Defendants deny the allegations in Paragraph 158.

159. By virtue of the foregoing, members of SURS who are current employees will lose COLAs in certain years.

**ANSWER:** Defendants deny the allegations in Paragraph 159.

160. SUAA represents numerous members of SURS who are current employees of a State University, Community College, or other affiliated group, and who are vested in the traditional (defined benefit) pension plan. Under PA 98-599 these members will be deprived of their COLAs in one or more years of their retirement.

**ANSWER:** On information and belief, Defendants admit that some SUAA members who selected the traditional plan will receive one or more 0% COLAs during their retirement under PA 98-599. Defendants deny the remaining allegations of paragraph 160 and, further answering, deny that SUAA is a proper representative or has standing to represent all of its members with respect to the claims and relief at issue in this suit.

161. Plaintiff Aimee Densmore is a current employee of Parkland Community College who is under the age of 43 and who is vested in the traditional (defined benefit) plan. Under PA 98-599, she will be deprived of her COLA in the second, fourth, sixth, eighth, and tenth years of her retirement.

**ANSWER:** Defendants admit that Ms. Densmore is a current employee of Parkland Community College who is under the age of 43 and who is vested in the traditional plan. Defendants further admit that, under Public Act 98-599, Ms. Densmore will receive a 0% COLA on the second, fourth, sixth, eighth, and tenth years of her retirement. Defendants deny the remaining allegations in Paragraph 161.

162. Plaintiff Richie Pankau is a current employee of UIUC who is over the age of 50 and who is vested in the traditional (defined benefit) plan. Under PA 98-599, he will be deprived of his COLA in the second year of his retirement.

**ANSWER:** Defendants admit that Mr. Pankau is a current employee of UIUC who is over the age of 50 and who is vested in the traditional plan. Defendants further admit that, under Public Act 98-599, Mr. Pankau will receive a 0% COLA in the second year of his retirement. Defendants deny the remaining allegations in Paragraph 162.

163. Plaintiff Yvonne Sergent is a current employee of UIUC who is over the age of 50 and who is vested in the traditional (defined benefit) plan. Under PA 98-599, she will be deprived of her COLA in the second year of her retirement.

**ANSWER:** Defendants admit that Ms. Sergent is a current employee of UIUC who is over the age of 50 and who is vested in the traditional plan. Defendants further admit that, under Public Act 98-599, Ms. Sergent will receive a 0% COLA in the second year of her retirement. Defendants deny the remaining allegations in Paragraph 163.

164. The State's purpose in depriving Plaintiffs of their property interest in their COLAs in certain years is to reduce the State's pension obligations and thus it is for a public purpose.

**ANSWER:** Defendants deny the allegations in Paragraph 164.

165. The State has not provided just compensation to Plaintiffs for this taking.

**ANSWER:** Defendants deny the allegations in Paragraph 165.

166. This taking thus violates the Takings Clause of the Illinois Constitution.

**ANSWER:** Defendants deny the allegations in Paragraph 166.

167. By its terms, the section of PA 98-599 which deprives Plaintiffs of their property interest in their COLAs in certain years for a public use without just compensation, is non-severable and a finding that it is unconstitutional therefore requires a finding that the entire Act is unconstitutional.

**ANSWER:** Defendants deny the allegations in Paragraph 167.

#### **COUNT IV(A) — SALARY CAP**

168. Plaintiffs restate and reallege paragraphs 1 through 69 as paragraph 168 of this Count IV(a).

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

169. By virtue of the foregoing, members of SURS have a right to have their annuities calculated based upon their actual salaries and not a statutory cap.

**ANSWER:** Defendants deny the allegations in Paragraph 169.

170. Plaintiff SUAA represents members of SURS who are currently earning less than \$109,971.00, which is the salary cap, and who reasonably anticipate that they will be earning more than the salary cap in existence at the time of their retirement and who therefore reasonably anticipate that PA 98-599 will result in their receiving a lower annuity than under current law.

**ANSWER:** On information and belief, Defendants admit that some SUAA members are currently earning less than \$109,971. Defendants lack knowledge sufficient to form a belief regarding the remaining allegations in Paragraph 170 and therefore deny those allegations. Further answering, Defendants deny that SUAA is a proper representative or has standing to represent all of its members with respect to the claims and relief at issue in this suit.

171. Plaintiff SUAA also represents members of SURS who currently earn more than \$109,971.00, which is the salary cap. As a result, their current salary will serve as the maximum upon which their annuity will be based even though they will most likely be earning more than that when they retire. Thus, PA 98-599 will result in a lower annuity than under the current law. Moreover, although their pension annuity will be capped based upon the salary they have in 2014, their contributions after 2014 will not be so capped.

**ANSWER:** On information and belief, Defendants admit that some SUAA members are currently earning less than \$109,971. Defendants deny that the Act provides for employee contributions based on a salary higher than a SURS member's pensionable salary. Defendants lack knowledge sufficient to form a belief regarding the remaining allegations in Paragraph 171 and therefore deny those allegations. Further answering, Defendants deny that SUAA is a proper representative or has standing to represent all of its members with respect to the claims and relief at issue in this suit.

172. Plaintiff Aimee Densmore is employed by Parkland Community College as an Academic Scheduler. Her current salary is less than \$109,971.00, which is the salary cap. However, Ms. Densmore has only 12 years of service and reasonably hopes that even with the moderate increases programmed into the salary cap, by the time she retires she will be earning well more than the salary cap. Thus, she reasonably anticipates that PA 98-599 will result in her receiving a lower annuity than under the current law. Moreover, although her pension annuity will be statutorily capped, her contributions after such time as her earnings exceed the statutory cap, will not be so capped.

**ANSWER:** Defendants admit that Ms. Densmore is currently employed by Parkland Community College, that she currently has 12 years of service, and that her current salary is less than \$109,971.00. Defendants deny that the Act provides for employee contributions based on a salary higher than a SURS member's pensionable salary. Defendants lack knowledge sufficient

to form a belief regarding the remaining allegations in Paragraph 172 and therefore deny those allegations.

173. Plaintiff Bruce Reznick is employed by UIUC as a Professor of Mathematics. He is earning more than \$109,971.00, which is the salary cap. As a result, his current salary will serve as the maximum upon which his annuity will be based even though he will most likely be earning more than that when he retires. Thus, PA 98-599 will result in his receiving a lower annuity than under the current law. Moreover, although his pension annuity will be capped based upon the salary he has in 2014, his contributions after 2014 will not be so capped.

**ANSWER:** Defendants admit that Mr. Reznick is currently employed by UIUC. Defendants deny that the Act provides for employee contributions based on a salary higher than a SURS member's pensionable salary. Further answering, Defendants allege that some of the benefits for which Mr. Reznick was eligible under the Pension Code were added to the Pension Code after he became a SURS member, that he was not required to make higher contributions for them, that the benefits he would receive under Public Act 98-599 will in all probably be more than the benefits available to him under the provisions of the Pension Code in effect when he first became a member, and that, consequently, relevant provisions of Public Act 98-599 applicable to him are valid and constitutional. Defendants lack knowledge sufficient to form a belief regarding the remaining allegations in Paragraph 173 and therefore deny those allegations.

174. By virtue of the foregoing, the State has diminished the Plaintiffs' pensions and is therefore in violation of the Pension Clause of the Illinois Constitution.

**ANSWER:** Defendants deny the allegations in Paragraph 174.

#### **COUNT IV(B) — SALARY CAP**

175. Plaintiffs restate and reallege paragraphs 168 through 174 as paragraph 175 of this Count IV(b).

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

176. By virtue of the foregoing, Plaintiffs Aimee Densmore and Bruce Reznick as well as most of SUAA's members, have a contractual right to have their annuities calculated based upon their actual salaries and not a statutory cap.

**ANSWER:** Defendants deny the allegations in Paragraph 176.

177. By virtue of the foregoing members of SURS have a right to have their annuities calculated based upon their actual salaries and not a statutory cap at the time they became vested in their pensions.

**ANSWER:** Defendants deny the allegations in Paragraph 177.

178. Plaintiff SUAA represents members of SURS who are currently earning less than \$109,971.00, which is the salary cap, and who reasonably anticipate that they will be earning more than the salary cap in existence at the time of their retirement and who therefore reasonably anticipate that PA 98-599 will result in a lower annuity than under the current law.

**ANSWER:** On information and belief, Defendants admit that some SUAA members are currently earning less than \$109,971. Defendants deny that the Act provides for employee contributions based on a salary higher than a SURS member's pensionable salary, deny the remaining allegations in Paragraph 178, and, further answering, deny that SUAA is a proper representative or has standing to represent all of its members with respect to the claims and relief at issue in this suit.

179. Plaintiff SUAA also represents members of SURS who currently earn more than \$109,971.00, which is the salary cap. As a result, their current salary will serve as the maximum upon which their annuity will be based even though they will most likely be earning more than that when they retire. Thus, PA 98-599 will result in their receiving a lower annuity than under the current law. Moreover, although their pension annuity will be capped based upon the salary they have in 2014, their contributions after 2014 will not be so capped.

**ANSWER:** On information and belief, Defendants admit that some SUAA members are currently earning less than \$109,971. Defendants deny that the Act provides for employee contributions based on a salary higher than a SURS member's pensionable salary, deny the remaining allegations in Paragraph 179, and, further answering, deny that SUAA is a proper representative or has standing to represent all of its members with respect to the claims and relief at issue in this suit.

180. Plaintiff Aimee Densmore is employed by Parkland Community College as an Academic Scheduler. Her current salary is less than \$109,971.00, which is the salary cap. However, Ms. Densmore has only 12 years of service and reasonably hopes that even with the



moderate increases programmed into the salary cap, by the time she retires she will be earning well more than the salary cap. Thus, she reasonably anticipates that PA 98-599 will result in her receiving a lower annuity than under the current law. Moreover, although her pension annuity will be statutorily capped, her contributions after such time as her earnings exceed the statutory cap will not be so capped.

**ANSWER:** Defendants admit that Ms. Densmore is currently employed by Parkland Community College, that she currently has 12 years of service, and that her current salary is less than \$109,971.00. Defendants deny that the Act provides for employee contributions based on a salary higher than a SURS member's pensionable salary. Defendants lack knowledge sufficient to form a belief regarding the remaining allegations in Paragraph 180 and therefore deny those allegations.

181. Plaintiff Bruce Reznick is employed by UIUC as a Professor of Mathematics. He is earning more than \$109,971.00, which is the salary cap. As a result, his current salary will serve as the maximum upon which his annuity will be based even though he will most likely be earning more than that when he retires. Thus, PA 98-599 will result in his receiving a lower annuity than under the current law. Moreover, although his pension annuity will be capped based upon the salary he has in 2014, his contributions after 2014 will not be so capped.

**ANSWER:** Defendants admit that Mr. Reznick is currently employed by UIUC. Defendants deny that the Act provides for employee contributions based on a salary higher than a SURS member's pensionable salary. Defendants lack knowledge sufficient to form a belief regarding the remaining allegations in Paragraph 181 and therefore deny those allegations. Further answering, Defendants allege that some of the benefits for which Mr. Reznick was eligible under the Pension Code were added to the Pension Code after he became a SURS member, that he was not required to make higher contributions for them, that the benefits he would receive under Public Act 98-599 will in all probably be more than the benefits available to him under the provisions of the Pension Code in effect when he first became a member, and that, consequently, relevant provisions of Public Act 98-599 applicable to him are valid and constitutional.

182. By virtue of the foregoing, the State has breached a contract with Plaintiffs, and has therefore violated the Contracts Clause of the Illinois Constitution.

**ANSWER:** Defendants deny the allegations in Paragraph 182.

**COUNT IV(C) — SALARY CAP**

183. Plaintiffs restate and reallege paragraphs 175 through 182, as paragraph 183 of this Count IV(c).

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

184. By virtue of the foregoing members of SURS have a property interest in having their annuities calculated based upon their actual salaries and not a statutory cap.

**ANSWER:** Defendants deny the allegations in Paragraph 184.

185. Plaintiff SUAA represents members of SURS who are currently earning less than \$109,971.00, which is the salary cap, and who reasonably anticipate that they will be earning more than the salary cap in existence at the time of their retirement and who therefore reasonably anticipate that PA 98-599 will result in their receiving a lower annuity than under current law.

**ANSWER:** On information and belief, Defendants admit that some SUAA members are currently earning less than \$109,971. Defendants deny that the Act provides for employee contributions based on a salary higher than a SURS member's pensionable salary, deny the remaining allegations in Paragraph 185, and, further answering, deny that SUAA is a proper representative or has standing to represent all of its members with respect to the claims and relief at issue in this suit.

186. Plaintiff SUAA also represents members of SURS who currently earn more than \$109,971.00 which is the salary cap. As a result, their current salary will serve as the maximum upon which their annuity will be based even though they will most likely be earning more than that when they retire. Thus, PA 98-599 will result in a lower annuity than under the current law. Moreover, although their pension annuity will be capped based upon the salary they have in 2014, their contributions after 2014 will not be so capped.

**ANSWER:** On information and belief, Defendants admit that some SUAA members are currently earning more than \$109,971. Defendants deny that the Act provides for employee contributions based on a salary higher than a SURS member's pensionable salary, deny the remaining allegations in Paragraph 186, and, further answering, deny that SUAA is a proper

representative or has standing to represent all of its members with respect to the claims and relief at issue in this suit.

187. Plaintiff Aimee Densmore is employed by Parkland Community College as an Academic Scheduler. Her current salary is less than \$109,971.00, which is the salary cap. However, Ms. Densmore has only 12 years of service and reasonably hopes that even with the moderate increases programmed into the salary cap, by the time she retires she will be earning well more than the salary cap. Thus, she reasonably anticipates that PA 98-599 will result in her receiving a lower annuity than under the current law. Moreover, although her pension annuity will be statutorily capped her contributions after such time as her earnings exceed the statutory cap will not be so capped.

**ANSWER:** Defendants admit that Ms. Densmore is currently employed by Parkland Community College, that she currently has 12 years of service, and that her current salary is less than \$109,971.00. Defendants deny that the Act provides for employee contributions based on a salary higher than a SURS member's pensionable salary. Defendants lack knowledge sufficient to form a belief regarding the remaining allegations in Paragraph 187 and therefore deny those allegations.

188. Plaintiff Bruce Reznick is employed by UIUC as a Professor of Mathematics. He is earning more than \$109,971.00, which is the salary cap. As a result, his current salary will serve as the maximum upon which his annuity will be based even though he will most likely be earning more than that when he retires. Thus, PA 98-599 will result in his receiving a lower annuity than under the current law. Moreover, although his pension annuity will be capped based upon the salary he has in 2014, his contributions after 2014 will not be so capped.

**ANSWER:** Defendants admit that Mr. Reznick is currently employed by UIUC. Defendants deny that the Act provides for employee contributions based on a salary higher than a SURS member's pensionable salary. Defendants lack knowledge sufficient to form a belief regarding the remaining allegations in Paragraph 188 and therefore deny those allegations. Further answering, Defendants allege that some of the benefits for which Mr. Reznick was eligible under the Pension Code were added to the Pension Code after he became a SURS member, that he was not required to make higher contributions for them, that the benefits he would receive under Public Act 98-599 will in all probably be more than the benefits available to him under the

provisions of the Pension Code in effect when he first became a member, and that, consequently, relevant provisions of Public Act 98-599 applicable to him are valid and constitutional.

189. The State's purpose in depriving Plaintiffs of their property interest in a portion of their pensions by capping the salary that can be used for COLA calculations is to reduce the State's pension obligations and thus it is for a public purpose.

**ANSWER:** Defendants deny the allegations in Paragraph 189.

190. The State has not provided just compensation to Plaintiffs for this taking.

**ANSWER:** Defendants deny the allegations in Paragraph 190.

191. This taking thus violates the Takings Clause of the Illinois Constitution.

**ANSWER:** Defendants deny the allegations in Paragraph 191.

#### **COUNT V(A) — EFFECTIVE RATE OF INTEREST**

192. Plaintiffs restate and reallege paragraphs 1 through 69 as paragraph 192 of this Count V(a).

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

193. By virtue of the foregoing, Plaintiffs Dominic Arend, Aimee Densmore, Marcia Hamor, and Bruce Reznick, and members of SURS who are current employees who selected the traditional (defined benefit) or portable plan at the time their pensions vested, have a right, which they will lose under PA 98-599, to an effective rate of interest based upon the following factors:

- a. SURS' past and expected investment experience;
- b. historical and expected fluctuations in the market value of investments;
- c. the desirability of minimizing volatility in the effective rate of interest from year to year; and
- d. the provision of reserves for anticipated losses upon sales, redemptions, or other disposition of investments, and for variations in interest experience.

**ANSWER:** Defendants deny the allegations in Paragraph 193.

194. SUAA represents currently employed members of SURS who elected the traditional (defined benefit) or portable pension plan and who, by virtue of the foregoing, will receive a reduced benefit at the time of their retirement under PA 98-599 than they would under the current law.

**ANSWER:** On information and belief, Defendants admit that some SUAA members elected the traditional or portable pension plan and would receive a reduced benefit at the time of their retirement under PA 98-599 than they would under the law in effect before PA 98-599. Defendants deny the remaining allegations of paragraph 194 and, further answering, deny that SUAA is a proper representative or has standing to represent all of its members with respect to the claims and relief at issue in this suit.

195. By virtue of the foregoing, Plaintiffs Dominic Arend, Aimee Densmore, Marcia Hamor, and Bruce Reznick will receive a reduced benefit at the times of their retirement under PA 98-599 than they would under the current law.

**ANSWER:** Defendants lack knowledge sufficient to form a belief regarding the remaining allegations in Paragraph 195 and therefore deny those allegations.

196. By virtue of the foregoing, the State has diminished the Plaintiffs' pensions and is therefore in violation of the Pension Clause of the Illinois Constitution.

**ANSWER:** Defendants deny the allegations in Paragraph 196.

**COUNT V(B) — EFFECTIVE RATE OF INTEREST**

197. Plaintiffs restate and reallege paragraphs 192 through 196 as paragraph 197 of this Count V(b).

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

198. By virtue of the foregoing, Plaintiffs Dominic Arend, Aimee Densmore, Marcia Hamor, and Bruce Reznick and all members of SURS who elected the traditional (defined benefit) or portable plan have a contractual right to their effective rate of interest based upon following factors:

- a. SURS' past and expected investment experience;
- b. historical and expected fluctuations in the market value of investments;
- c. the desirability of minimizing volatility in the effective rate of interest from year to year; and
- d. the provision of reserves for anticipated losses upon sales, redemptions, or other disposition of investments, and for variations in interest experience.

**ANSWER:** Defendants deny the allegations in Paragraph 198.

199. By virtue of the foregoing, under PA 98-599, Plaintiffs Dominic Arend, Aimee Densmore, Marcia Hamor, and Bruce Reznick, will lose the benefit of an effective rate of interest based upon the following factors:

- a. SURS' past and expected investment experience;
- b. historical and expected fluctuations in the market value of investments;
- c. the desirability of minimizing volatility in the effective rate of interest from year to year; and
- d. the provision of reserves for anticipated losses upon sales, redemptions, or other disposition of investments, and for variations in interest experience.

**ANSWER:** Defendants deny the allegations in Paragraph 199.

200. SUAA represents currently employed members of SURS who elected the traditional (defined benefit) or portable pension plan and who, by virtue of the foregoing, will receive a reduced benefit at the time of their retirement under PA 98-599 than they would under the current law.

**ANSWER:** On information and belief, Defendants admit that some SUAA members elected the traditional or portable pension plan and would receive a reduced benefit at the time of their retirement under PA 98-599 than they would under the law in effect before PA 98-599. Defendants deny the remaining allegations of paragraph 200 and, further answering, deny that SUAA is a proper representative or has standing to represent all of its members with respect to the claims and relief at issue in this suit.

201. By virtue of the foregoing, Plaintiffs Dominic Arend, Amy Densmore, Marcia Hamor, and Bruce Reznick will receive a reduced benefit at the times of their retirement under PA 98-599 than they would under the current law.

**ANSWER:** Defendants lack knowledge sufficient to form a belief regarding the remaining allegations in Paragraph 201 and therefore deny those allegations.

202. By virtue of the foregoing, the State has breached a contract with Plaintiffs, and has therefore violated the Contracts Clause of the Illinois Constitution.

**ANSWER:** Defendants deny the allegations in Paragraph 202.

**COUNT V(C) — EFFECTIVE RATE OF INTEREST**

203. Plaintiffs restate and reallege paragraphs 197 through 202 as paragraph 203 of this Count V(c).

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

204. By virtue of the foregoing, Plaintiffs Dominic Arend, Aimee Densmore, Marcia Hamor, and Bruce Reznick, and members of SURS have a property interest in an effective rate of interest based upon the following factors:

- a. SURS' past and expected investment experience;
- b. historical and expected fluctuations in the market value of investments;
- c. the desirability of minimizing volatility in the effective rate of interest from year to year; and
- d. the provision of reserves for anticipated losses upon sales, redemptions, or other disposition of investments, and for variations in interest experience.

**ANSWER:** Defendants deny the allegations in Paragraph 204.

205. SUAA represents currently employed members of SURS who elected the traditional (defined benefit) or portable pension plan and who, by virtue of the foregoing, will receive a reduced benefit at the time of their retirement under PA 98-599 than they would under the current law.

**ANSWER:** On information and belief, Defendants admit that some SUAA members elected the traditional or portable pension plan and would receive a reduced benefit at the time of their retirement under PA 98-599 than they would under the law in effect before PA 98-599. Defendants deny the remaining allegations of paragraph 205 and, further answering, deny that SUAA is a proper representative or has standing to represent all of its members with respect to the claims and relief at issue in this suit.

206. By virtue of the foregoing, Plaintiffs Dominic Arend, Oliver Clark, Marcia Hamor, and Bruce Reznick will receive a smaller lump sum at the times of their retirement under PA 98-599 than they would under the current law.

**ANSWER:** Defendants deny that Mr. Clark will receive a lump sum from SURS. Defendants lack knowledge sufficient to form a belief regarding the remaining allegations in Paragraph 206 and therefore deny those allegations.

207. The State's purpose in depriving Plaintiffs of a portion of their pensions by reducing the effective rate of interest is to reduce the State's pension obligations and thus it is for a public purpose.

**ANSWER:** Defendants deny the allegations in Paragraph 207.

208. The State has not provided just compensation to Plaintiffs for this taking.

**ANSWER:** Defendants deny the allegations in Paragraph 208.

209. This taking thus violates the Takings Clause of the Illinois Constitution.

**ANSWER:** Defendants deny the allegations in Paragraph 209.

**COUNT VI(A) — INCREASED YEARS OF SERVICE: NEW RETIREMENT AGE**

210. Plaintiffs restate and reallege paragraphs 1 through 69 as paragraph 210 of this Count VI(a).

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

211. By virtue of the foregoing, members of SURS who are current employees have a property interest in a right to retire at an age determined by the formula for the retirement age as it stood when they became vested in their pensions.

**ANSWER:** Defendants deny the allegations in Paragraph 211.

212. Plaintiff SUAA represents members of SURS who, by virtue of the foregoing, will be required to contribute more years of service and consequently more money under PA 98-599 than they would under the current law.

**ANSWER:** On information and belief, Defendants admit that under the Act some SUAA members will need more years of service before being eligible to retire with an annuity, but deny the remaining allegations of paragraph 212 and, further answering, deny that SUAA is a proper representative or has standing to represent all of its members with respect to the claims and relief at issue in this suit.

213. By virtue of the foregoing, Plaintiff Aimee Densmore will be required to contribute more years of service and consequently more money under PA 98-599 than she would under the current law.



**ANSWER:** Defendants lack knowledge sufficient to form a belief regarding the allegations in Paragraph 213 and therefore deny those allegations.

214. By virtue of the foregoing, the State has diminished the Plaintiffs' pensions and is therefore in violation of the Pension Clause of the Illinois Constitution.

**ANSWER:** Defendants deny the allegations in Paragraph 214.

**COUNT VI(B) — INCREASED YEARS OF SERVICE — NEW RETIREMENT AGE**

215. Plaintiffs restate and reallege paragraphs 210 through 214, as paragraph 215 of this Count VI(b).

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

216. By virtue of the foregoing members of SURS who are current employees have a right to retire at an age determined by the formula for retirement age as it stood when they became vested in their pensions.

**ANSWER:** Defendants deny the allegations in Paragraph 216.

217. Plaintiff SUAA represents members of SURS who, by virtue of the foregoing, will be required to contribute more years of service and consequently more money under PA 98-599 than they would under the current law.

**ANSWER:** On information and belief, Defendants admit that under the Act some SUAA members will need more years of service before being eligible to retire with an annuity, but deny the remaining allegations of paragraph 217 and, further answering, deny that SUAA is a proper representative or has standing to represent all of its members with respect to the claims and relief at issue in this suit.

218. By virtue of the foregoing, Plaintiff Aimee Densmore has a contractual right to retire at an age determined by the formula for retirement age as it stood when she became vested in her pension.

**ANSWER:** Defendants deny the allegations in Paragraph 218.

219. By virtue of the foregoing, Plaintiff Aimee Densmore will be required to contribute more years of service and consequently more money under PA 98-599 than she would under the current law.

**ANSWER:** Defendants lack knowledge sufficient to form a belief regarding the allegations in Paragraph 219 and therefore deny those allegations.

220. By virtue of the foregoing, the State has breached a contract with Plaintiffs, and has therefore violated the Contracts Clause of the Illinois Constitution.

**ANSWER:** Defendants deny the allegations in Paragraph 220.

**COUNT VI(C) — INCREASED YEARS OF SERVICE: NEW RETIREMENT AGE**

221. Plaintiffs restate and reallege paragraphs 215 through 220, as paragraph 221 of this Count VI(c).

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

222. By virtue of the foregoing members of SURS who are current employees have a property interest in their right to retire at an age determined by the formula for retirement age as it stood when they became vested in their pensions.

**ANSWER:** Defendants deny the allegations in Paragraph 222.

223. Plaintiff SUAA represents members of SURS who, by virtue of the foregoing, will be required to contribute more years of service and consequently more money under PA 98-599 than they would under the current law.

**ANSWER:** On information and belief, Defendants admit that under the Act some SUAA members will need more years of service before being eligible to retire with an annuity, but deny the remaining allegations of paragraph 223 and, further answering, deny that SUAA is a proper representative or has standing to represent all of its members with respect to the claims and relief at issue in this suit.

224. By virtue of the foregoing, Plaintiff Aimee Densmore will be required to contribute more years of service and consequently more money under PA 98-599 than she would under the current law.

**ANSWER:** Defendants lack knowledge sufficient to form a belief regarding the allegations in Paragraph 224 and therefore deny those allegations.

225. By increasing the years of service required to retire, the State deprives Plaintiffs of a property interest in years of service, money that they will be forced to contribute as a result

thereof, and money they will not receive from annuities in years that they are not retired, but otherwise would have been.

**ANSWER:** Defendants deny the allegations in Paragraph 225.

226. The State's purpose in increasing the years of service required to retire and collect a pension (and thereby taking Plaintiffs' property interest) is to reduce the State's pension obligations and thus it is for a public purpose.

**ANSWER:** Defendants deny the allegations in Paragraph 226.

227. The State has not provided just compensation to Plaintiffs for this taking.

**ANSWER:** Defendants deny the allegations in Paragraph 227.

228. This taking thus violates the Takings Clause of the Illinois Constitution.

**ANSWER:** Defendants deny the allegations in Paragraph 228.

**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.

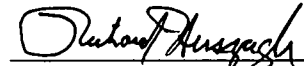


WHEREFORE, Defendants pray for entry of judgment in their favor and against the plaintiffs on all of their claims, and for such further relief as is warranted in the circumstances.

Date: May 15, 2014

Respectfully Submitted,

LISA MADIGAN  
Illinois Attorney General

  
\_\_\_\_\_  
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## 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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