

FILED

**IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS**

JAN 02 2014 CIV.-1

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

Plaintiffs,)

-vs-)

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

Defendants.)

Anthony P. DeLuca Clerk of the
Circuit Court

2014 CH000003

Case No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

ILLINOIS STATE EMPLOYEES ASSOCIATION RETIREES, ROBERT SILGER,
GWENN KLINGLER, BARBARA SCHOB, BARBARA MAXEINER, AND JOHN
MUNDSTOCK, on their own behalf and on behalf of a class of persons similarly situated, by their
attorneys, Donald M. Craven, P.C., for their Complaint against Defendants THE BOARD OF
TRUSTEES OF THE STATE EMPLOYEES' RETIREMENT SYSTEM, THE BOARD OF
TRUSTEES OF THE GENERAL ASSEMBLY RETIREMENT SYSTEM, THE BOARD OF
TRUSTEES OF THE STATE TEACHERS' RETIREMENT SYSTEM, and THE BOARD OF

TRUSTEES OF THE STATE UNIVERSITY RETIREMENT SYSTEM, JUDY BAAR TOPINKA, comptroller of the State of Illinois, and DAN RUTHERFORD, the Treasurer of the State of Illinois, state as follows:

ALLEGATIONS COMMON TO ALL COUNTS

1. Plaintiff Illinois State Employees Association Retirees (“ISEAR”) is an Illinois corporation whose address is 1548 West Jefferson Street, Springfield Illinois, 62702. All ISEAR members are annuitants of a pension system of the State of Illinois. ISEAR is constituted to promote the welfare of public employees who have retired from service with the State of Illinois in all ways compatible with the public interest and to support and promote improvement in the public employee’s retirement systems of Illinois.
2. Plaintiff Robert Silger is an annuitant in the State Employee Retirement System (“SERS”). At all times during his term of service, Mr. Silger made all contributions required of him by existing terms of state law and SERS regulations to enable him to be eligible for all levels of SERS benefits, including but not limited to the 3% annual increases available to SERS annuitants.
3. Plaintiff Gwenn Klingler is an annuitant in the General Assembly Retirement System (“GARS”). At all times during her term of service, Ms. Klingler made all contributions required of her by existing terms of state law and GARS regulations to enable her to be eligible for all levels of GARS benefits, including but not limited to the 3% annual increases available to GARS annuitants.
4. Plaintiff Barbara Schob is an annuitant in the State Teachers’ Retirement System (“TRS”). At all times during her term of service, Ms. Schob made all contributions required of her by

existing terms of state law and TRS regulations to enable her to be eligible for all levels of TRS benefits, including but not limited to the 3% annual increases available to TRS annuitants.

5. Plaintiff Barbara Maxeiner is an annuitant in the State University Retirement System (“SURS”). At all times during her term of service, Ms. Maxeiner made all contributions required of her by existing terms of state law and SURS regulations to enable her to be eligible for all levels of SURS benefits, including but not limited to the 3% annual increases available to SURS annuitants.
6. Plaintiff John Mundstock is an annuitant in the SERS, having paid additional dollars in order to participate in the Early Retirement Incentive Program in 2002. At all times during his term of service, Mr. Mundstock made all contributions required of him by existing terms of state law and SERS regulations to enable him to be eligible for all levels of SERS benefits, including but not limited to the 3% annual increases available to SERS annuitants.
7. Contrary to the fiscally responsible action of the individual plaintiffs and all others members of the plaintiff class who made all required contribution to the appropriate Retirement System, (including additional ERI contributions for the members of that sub-class) the State of Illinois through the General Assembly and the office of the Governor failed and refused to budget and appropriate funding for these Retirement Systems.
8. The failure of the State, through the General Assembly and the office of the Governor to sufficiently fund these Retirement Systems resulted in (as to some Systems) the sale of assets in order to fund annuity payments to retirees.
9. The failure of the State, through the General Assembly and the office of the Governor to

sufficiently fund these Retirement Systems resulted in unfunded liabilities for each of these Retirement Systems. It is the existence of these unfunded liabilities which the General Assembly now claims to be the basis of a “pension crisis” in the State, and the excuse for diminishing the pensions of Plaintiff class.

10. Defendant The Board of Trustees of the General Assembly Retirement System (“GARS Board of Trustees”) is the governing body of an independent agency of the State of Illinois, organized and existing pursuant to Article 2 of the Illinois Pension Code, 40 ILCS 5/2-101, *et seq.* The GARS Board of Trustees is sued in its official capacity only.
11. Defendant Board of Trustees of State Employees’ Retirement System (“SERS Board of Trustees”) is the governing body of an independent agency of the State of Illinois, organized and existing pursuant to Article 14 of the Illinois Pension Code, 40 ILCS 5/14-101, *et seq.* The SERS Board of Trustees is sued in its official capacity only.
12. Defendant The Board of Trustees of the State Teachers’ Retirement System (“TRS Board of Trustees”) is the governing body of an independent agency of the State of Illinois, organized and existing pursuant to Article 16 of the Illinois Pension Code, 40 ILCS 5/16-101, *et seq.* The TRS Board of Trustees is sued in its official capacity only.
13. Defendant The Board of Trustees of the State Universities Retirement System (“SURS Board of Trustees”) is the governing body of an independent agency of the State of Illinois organized and existing pursuant to Article 15 of the Illinois Pension Code, 40 ILCS 5/15-101 *et seq.* The SURS Board of Trustees is sued in its official capacity only.
14. Defendant Judy Baar Topinka is the Comptroller of the State of Illinois, a constitutional office, charged by Article V, Section 17 of the Constitution of Illinois with the responsibility

to “maintain the State’s central fiscal accounts, and order payments in and out of the funds held by the Treasurer.” As such, Comptroller Topinka signs paychecks or grants approval to electronic payments made by the State to its retirees. Comptroller Topinka is also the Chairperson of the SERS Board of Trustees. Comptroller Topinka is sued in her official capacity only.

15. Defendant Dan Rutherford is the Treasurer of the State of Illinois. Section 14-137 of the Pension Code designates the Treasurer Rutherford as the Treasurer of SERS and requires that all monies of SERS shall be deposited by Treasurer Rutherford in a “special trust fund.” Treasurer Rutherford is sued in his official capacity only.
16. Plaintiffs bring this action on behalf of a class consisting of all annuitants of SERS, GARS, TRS, and SURS. The class is believed to exceed 10,000 persons, such that joinder of all members is impracticable. There are questions of law or fact common to the class, which common questions predominant over questions affecting only individual members. The representative parties will fairly and adequately protect the interest of the class.
17. Plaintiffs also seek the creation of a subclass of persons who availed themselves of the Early Retirement Incentive Program in 2002. This subclass (the “ERI Subclass”) is believed to have over 5,000 members. Plaintiff John Mundstock is member of the ERI Subclass and will adequately represent the subclass.
18. As is set forth below, the ERI Subclass involves only the Count of this complaint which involves promissory estoppel principles. With respect to the other counts, the claims of the ERI Subclass are identical to those of the remaining members of the class.
19. Article 13, Section 5 of the Illinois Constitution of 1970 provides as follows:

PENSION AND RETIREMENT RIGHTS

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.

State Employees' Retirement System of Illinois

20. Sections 14-101 and 14-102 of the Illinois Pension Code, 40 ILCS 5/14-101 and 14/102,

define the business and purpose of SERS as follows:

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

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

21. The named Plaintiffs and the members of the class were promised, as a term and condition of their employment, and as a "benefit" accompanying their membership in a pension or retirement system of the State of Illinois, and as an enforceable contractual relationship, that they would be entitled to a 3% per annum increase in their annuity each year. This provision is commonly (although improperly) referred to as the annual Cost of Living ("COLA") adjustment, although it is completely independent of any increase or decrease in the cost of living. It will be referred to in this complaint as the "3% Automatic Increase".
22. Section 14-153.1, titled Automatic Increase in Service Retirement Allowance, was added to the Illinois Pension code by Public Act 76-748, effective August 15, 1969, prior to the

adoption fo the 1970 Constitution. It provided that any employee eligible for a service retirement annuity under this Article, (SERS) who retires from service on or after December 31, 1969, having attained age 60, shall on January 1 next following the first full year of retirement, and each succeeding year thereafter, have the amount of his (or her) then fixed and payable retirement annuity increased by an additional 1 ½%. It also provided that these increases shall be applicable only if the employee makes an additional contribution of 1% of each salary payment concurrently with and in addition to the member contribution otherwise being made to the system effective January 1, 1970 for not less than the equivalent of one full year.

23. This same section was amended by Public Act 77-292, effective July 15, 1971, to provide that effective January 1, 1972, the rate of increase in the service retirement allowance shall be 2%. That same year this section also was amended by Public Act 77-1302, effective August 27, 1971. It expanded eligibility for this automatic increase to include any employee eligible for a service retirement annuity under Article XIV who retires before age 60 having at least 35 years of creditable service.
24. In 1977 this Section was renumbered and retitled as Section 14-114, Automatic Increase in Retirement Annuity by Public Act 80-841, and effective January 1, 1978. Annuity was substituted for each place the allowance was previously used.
25. The next year House Bill 1803 (Public Act 80-1408) was passed and approved the Governor effective August 28, 1978. It amended Section 14-114 to provide that on January 1 of each succeeding year, concurrently with retirement annuity payments to the retired employee, the retired employee's original monthly annuity shall be increased by an additional 3% (instead

of 2%). The language that this would only apply to employees who make the additional contributions required after December 31, 1969 for the purpose of the automatic increases for not less than one year was retained.

26. In 1985 this Section was amended again, this time by Public Act 84-162, effective August 16, 1985, to add language that allowed any person receiving a retirement annuity under this Article who retires before attaining age 60 and with less than 35 years of creditable service to have the amount of their fixed and payable annuity increased by 3% on the January 1 next following (1) attainment of age 60, or (2) the first anniversary of retirement, whichever is later.
27. Another subsequent amendment to this Section 14-114 by Public Act 86-273, approved and effective August 23, 1989, provided that beginning January 1, 1990, all automatic increases payable under this Section shall be calculated as a percentage of the total annuity payable at the time of the increase, including previous increases granted under this Section (instead of being based on the employee's original monthly retirement annuity).
28. During the past 24 years there have been only two other relatively modest changes in the Section 14-114. Public Act 87-1265, approved and effective January 25, 1993, added language providing that a person who received early retirement incentives under Section 14-108.3 whose retirement annuity began after January 1, 1992, the first anniversary of that retirement shall be deemed to be January 1, 1993. The last change to this Section was made by Public Act 91-927, approved and effective December 14, 2000. It changed the eligibility for this automatic increase for those who retired under age 60 with less than 35 years of service when added to the member's age must equal at least 85.

29. At no time during the forty-four years since what is now Section 14-114 was added to the Pension Code in 1969 has it included any language or reference to the automatic increase being for a cost of living adjustment or COLA. In addition the requirement that annuitants are only eligible for these automatic increases if the employee made the additional contribution required on or after December 31, 1969 for at least the equivalent of one full year is still in force and included in this Section.

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

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

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

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

Beginning January 1, 1990, all automatic annual increases payable under the Section shall be calculated as a percentage of the total annuity payable at the

time of the increase, including previous increases granted under this Article.

31. On December 5, 2013, Governor Pat Quinn signed Public Act 98-599, which impacts the ability of Plaintiffs to receive the annual increase. Public Act 98-599 denies to these Plaintiffs the 3% Automatic Increase and limits the annual increase per employee. Public Act 98-599 first defines the new term in the Pension Code, of "Tier 1 Member", adding the new Section 14-103.40:

Sec. 14-103.40 Tier 1 member. "Tier 1 member": A member of this System who first became a member or participant before January 1, 2011 under any reciprocal retirement system or pension fund established under this Code other than a retirement system or pension fund established under Article 2, 8 3, 4, 5, 6, or 18 of this Code.

Plaintiffs Robert Silger and John Mundstock are "Tier 1 Members" under this definition.

32. Next, Public Act 98-599 eliminated the Automatic Increase, establishing exceptions that swallowed the rule, providing as follows, (new language underlined, deleted language ~~stricken~~):

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

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

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

which the annuity is based.

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

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

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

(1) the second automatic annual increase payable

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

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

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

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

General Assembly Retirement System

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

Sec. 2-101. Creation of system. A retirement system is created to provide retirement annuities, survivor's annuities and other benefits for members of the General Assembly, certain elected state officials and their beneficiaries. The system shall be known as the "General Assembly Retirement System". All its funds and property shall be a trust separate from all other entities, maintained for the purpose of securing payment of annuities and benefits under this Article.

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

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

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

35. On December 5, 2013 Public Act 98-599, which impacts the ability of Plaintiffs to receive the 3% Automatic Increase, first defined a two new terms in the Pension Code, of “Tier 1 Member” and “Tier 1 Retiree”, adding new Sections 5/2-105.1 and 5/2-105.2:

Sec. 2-105.1. Tier 1 participant; Tier 2 participant.

“Tier 1 participant”: A participant who first became a participant before January 1, 2011.

“Tier 2 participant”: A participant who first became a participant on or after January 1, 2011.

Sec. 2-105.2. Tier 1 retiree. “Tier 1 retiree” means a former Tier 1 participant who has made the election to retire and has terminated service.

Plaintiff Gwenn Klingler is a “Tier 1 Retiree” under these definitions.

36. Next, Public Act 98-599 eliminated the Automatic Increase, establishing exceptions that swallowed the rule, providing as follows, (new language underlined, deleted language ~~stricken~~):

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

(a) Except as otherwise provided in this Section, a participant who retires after June 30, 1967, and who has not received an initial increase under this Section before the effective date of this amendatory Act of 1991, shall, in January or July next following the first anniversary of retirement, whichever occurs first, and in the same month of each year thereafter, but in no event prior to age 60, have the amount of the originally granted retirement annuity

increased as follows: for each year through 1971, 1 1/2%; for each year from 1972 through 1979, 2%; and for 1980 and each year thereafter, 3%. Annuitants who have received an initial increase under this subsection prior to the effective date of this amendatory Act of 1991 shall continue to receive their annual increases in the same month as the initial increase.

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

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

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

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

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

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

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

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

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

State Teachers' Retirement System

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

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

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

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

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

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

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

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

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

However, the initial annual increase calculated under this Section for the recipient of a disability retirement annuity granted under Section 16-149.2 shall be reduced by an amount equal to the total of all increases in that

annuity received under Section 16-149.5 (but not exceeding 100% of the amount of the initial increase otherwise provided under this Section).

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

39. On December 5, 2013 Public Act 98-599, which impacts the ability of Plaintiffs to receive the 3% Automatic Increase and limits the annual increase per employee, first defines the new term in the Pension Code, of "Tier 1 Member", adding the new Section 16-106.4:

Sec. 16-106.4. Tier 1 member. "Tier 1 member": A member under this Article who first became a member or participant before January 1, 2011 under any reciprocal retirement system or pension fund established under this Code other than a retirement system or pension fund established under Article 2, 3, 4, 5, 6, or 18 of this Code.

Plaintiff Barbara Schob is a "Tier 1 Member" under this definition.

40. Next, Public Act 98-599 eliminated the Automatic Increase, establishing exceptions that swallowed the rule, providing as follows, (new language underlined, deleted language ~~stricken~~):

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

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

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

- (1) 1.5% of the originally granted retirement annuity or disability retirement annuity multiplied by the number of years elapsed, if any, from the date of retirement until January 1, 1972, plus
- (2) 2% of the originally granted annuity multiplied by the number of years elapsed, if any, from the date of retirement or January 1, 1972, whichever is later, until January 1, 1978, plus
- (3) 3% of the originally granted annuity multiplied by the number of years elapsed from the date of retirement or January 1, 1978, whichever is later, until the effective date of the initial increase.

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

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

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

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

(ii) in the case of a disability retirement annuity granted under Section 16-149.2, the initial increase shall be subject to the reduction provided in subsection (a) for increases previously received under Section 16-149.5.

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

be cumulative and compounded. For the purposes of this subsection (a-1), "consumer price index-u" means the index published by the Bureau of Labor Statistics of the United States Department of Labor that measures the average change in prices of good sand services purchased by all urban consumers, United States city average, all items, 1982-84 = 100. The new dollar amount resulting from each annual adjustment shall be determined by the Public Pension Division of the Department of Insurance and made available to the System by November 1 of each year.

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

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

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

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

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

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

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

State University Retirement System

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

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

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

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

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

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

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

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

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

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

43. Public Act 98-92 effective July 16, 2013 and Public Act 98-596 effective November 19, 2013, defined two new terms in the Pension Code, of "Tier 1 Member" and "Tier 2 Member", adding the new Sections 15-108.1 and 15-108.2:

Sec. 15-108.1. Tier 1 member. "Tier 1 member": A participant or an annuitant of a retirement annuity under this Article, other than a participant in the self-managed plan under Section 15-158.2, who first became a participant or member before January 1, 2011 under any reciprocal retirement system or pension fund established under this Code, other than a retirement system or pension fund established under Articles 2, 3, 4, 5, 6, or 18 of this Code. "Tier 1 member" includes a person who first became a participant under this System before January 1, 2011 and who accepts a refund and is subsequently reemployed by an employer on or after January 1, 2011.

Sec. 15-108.2. Tier 2 member. "Tier 2 member": A person who first becomes a participant under this Article on or after January 1, 2011, other than a person in the self-managed plan established under Section 15-158.2, unless the person is otherwise a Tier 1 member. The changes made to this Section by this amendatory Act of the 98th General Assembly are a correction of existing law and are intended to be retroactive to the effective date of Public Act 96-889, notwithstanding the provisions of Section 1-103.1 of this Code.

Plaintiff Barbara Maxeiner is a "Tier 1 Member" under this definition.

44. Next, Public Act 98-599 eliminated the Automatic Increase, establishing exceptions that swallowed the rule, providing as follows, (new language underlined, deleted language ~~stricken~~):

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

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

Effective January 1 immediately following the date the retirement annuity begins, the annuitant shall receive an increase in his or her monthly retirement annuity of 0.125% of the monthly retirement annuity provided under Rule 1, Rule 2, Rule 3, or Rule 4 contained in this Section, multiplied

by the number of full months which elapsed from the date the retirement annuity payments began to January 1, 1972, plus 0.1667% of such annuity, multiplied by the number of full months which elapsed from January 1, 1972, or the date the retirement annuity payments began, whichever is later, to January 1, 1978, plus 0.25% of such annuity multiplied by the number of full months which elapsed from January 1, 1978, or the date the retirement annuity payments began, whichever is later, to the effective date of the increase.

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

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

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

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

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

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

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

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

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

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

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

COUNT I

(Violation of Pensions Clause of Illinois Constitution)

- 1-44. Plaintiffs reallege paragraphs 1-44 of the Allegations Common to all Counts as and for paragraphs 1-44 of Count I.
45. Public Act 98-599, by eliminating the 3% Automatic Increase impairs or diminishes the Plaintiffs' pension benefits in violation of Article 13, Section 5 of the Illinois Constitution.
46. There is a controversy between the named Plaintiffs and the members of the class on one hand, and the Defendants on the other, as to the validity of Public Act 98-599 and the others

matters set forth in this Count, such that declaratory and injunctive relief is appropriate. The named Plaintiffs and the members of the class have no adequate remedy at law, and should the Defendant fail to pay the Plaintiffs their 3% Automatic Increase, the named Plaintiffs and the members of the class will suffer irreparable injury. Consequently, the Court should enter a preliminary injunctive relief ordering the establishment of an escrow into which the Defendant will pay the difference between the increases mandated by Public Act 98-599 and the 3% Automatic Increase, *pendente lite*.

WHEREFORE, Plaintiffs Illinois State Employees Association Retirees, Robert Silger, Gwenn Klingler, Barbara Schob, Barbara Maxeiner, and John Mundstock request the following relief:

- a. That the class, consisting of all retired SERS, GARS, TRS, and SURS participants with 20 years creditable service not subject to a collective bargaining agreement, be certified;
- b. That the Court declare Public Act 98-599 invalid as being in derogation of Article 13, Section 5 of the Illinois Constitution;
- c. That the Court enjoin the Defendants for implementing Public Act 98-599 and that Section 14-114 of the Pension Code as it existed prior to Public Act 98-599 is still the law of Illinois;
- d. That the Court establish an escrow into which difference between the increases mandated by Public Act 98-599 and the 3% Automatic Increase, be placed *pendente lite*; and
- e. For such other and further relief as the Court deems appropriate.

COUNT II

(Violation of Contract Clause of the Illinois Constitution)

1-44. Plaintiffs reallege paragraphs 1-44 of the Allegations Common to all Counts and for paragraphs 1-44 of Count II.

47. The Constitution defines membership in the pension system as an “enforceable contractual relationship.” By performing 20 years of loyal service, the named Plaintiffs and members of the Plaintiff class gave good and valuable consideration to the State of Illinois, and they are entitled to the benefit of their contract.

48. The adoption of Public Act 98-599 is an impairment of the contract in violation of Article 1 Section 16 of the Illinois Constitution, which 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.

49. There is a controversy between the named Plaintiffs and the members of the class on the one hand, and the Defendants on the other, as to the validity of Public Act 98-599 and the other matters set forth in this Count, such that declaratory and injunctive relief is appropriate. The named Plaintiffs and the members of the class have no adequate remedy at law, and should the Defendant fail to pay the Plaintiffs their 3% Automatic Increase, the named Plaintiffs and the members of the class, they will suffer irreparable injury. Consequently, the Court should enter a preliminary injunctive relief ordering the establishment of an escrow into which the Defendant will pay the difference between the increases mandated by Public Act 98-599 and the 3% Automatic Increase, *pendente lite*.

WHEREFORE, Plaintiffs Illinois State Employees Association Retirees, Robert Silger, Gwenn Klingler, Barbara Schob, Barbara Maxeiner, and John Mundstock request the following relief:

- a. That the class, consisting of all retired SERS, GARS, TRS, and SURS participants with 20 years creditable service not subject to a collective bargaining agreement, be certified;
- b. That the Court declare Public Act 98-599 invalid as being in derogation of Article 13, Section 5 of the Illinois Constitution;
- c. That the Court enjoin the Defendants from implementing Public Act 98-599 and find that Sections 14-114, 2119.1(a), 16-101, and 15-101 of the Pension Code as they existed prior to Public Act 98-599 is still the law of Illinois;
- d. That the Court establish an escrow into which difference between the increases mandated by Public Act 98-599 and the 3% Automatic Increase, be placed *pendente lite*; and
- e. For such and other and further relief as the Court deems appropriate.

COUNT III

(Violation of Equal Protection Clause of the Illinois Constitution)

- 1-44. Plaintiffs reallege paragraphs 1-44 of the Allegations Common to all Counts as and for paragraphs 1-44 of Count III.
50. Public Act 98-599 eliminated the 3% Automatic Increase for SERS, GARS, TRS, and SURS leaving this 3% Automatic Increase in the Judges Retirement System of Illinois ("JRS"), as such, is a violation of Article 1 Section 2 of the Illinois Constitution, which provides:

No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.

51. Section 18-125.1 of the Pension Code (the Judges Retirement System), left unchanged by

Public Act 98-599, provides:

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

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

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

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

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

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

the date of such resumed service, upon subsequent termination of such resumed service.

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

52. There is no basis in fact or law to allow annuitants in the Judges Retirement System to continue to receive the 3% Automatic Increases, while diminishing the pensions of annuitants in the other four Retirement Systems by reducing the automatic increases in those systems.

WHEREFORE, Plaintiffs Illinois State Employees Association Retirees , Robert Silger, Gwenn Klingler, Barbara Schob, Barbara Maxeiner, and John Mundstock request the following relief:

- a. That the class, consisting of all retired SERS, GARS, TRS, and SURS participants with 20 years creditable service not subject to a collective bargaining agreement, be certified;
- b. That the Court declare Public Act 98-599 invalid as being in derogation of Article 1, Section 2 of the Illinois Constitution;
- c. That the Court enjoin the Defendants from implementing Public Act 98-599 and find that Sections 14-114, 2119.1(a), 16-101, and 15-101 of the Pension Code as they existed prior to Public Act 98-599 is still the law of Illinois;
- d. That the Court establish an escrow into which difference between the increases mandated by Public Act 98-599 and the 3% Automatic Increase, be placed *pendente lite*; and
- e. For such and other and further relief as the Court deems appropriate.

COUNT IV

(Impairment of Contract-ERI Participants)

- 1-44. Plaintiffs reallege paragraphs 1-44 of the Allegations Common to all Counts as and for paragraphs 1-44 of Count IV.
53. This Count IV is brought by ISEAR and John Mundstock and relates only to the ERI Subclass.
54. In 2002, the State of Illinois announced an Early Retirement Incentive Program (hereinafter "ERI Program"). The program was specifically designed to lower the personnel costs of the State of Illinois by pensioning off higher paid employees with many years of service. The Early Retirement Program promised that one of the things the ERI Participants was buying was continued entitlement to the 3% Automatic Increase as established for annuitants.
55. Mr. Mundstock and the members of the ERI Subclass reasonably and detrimentally relied on these promises made by the State of Illinois. Their actions in reliance on these promises included but were not limited to (a) retirement from State service and (b) payment of substantial sums of cash to purchase additional service credits. The State's promises, and the ERI Subclass's reliance thereon, gave rise to implied contracts between the State and members of the ERI Subclass pursuant to the principles of promissory estoppel.
56. According to a report of the Commission of Government Forecasting and Accountability, in reliance on the ERI Program, John Mundstock and members of the ERI Subclass paid the State over \$128 million to purchase additional service credits and retired from State service. They thereby reduced the State's payroll cost over \$2.9 billion in the years 2003-2012.

57. The State's promises, and the ERI Subclass's reliance thereon, created implied contracts between the State and members of the ERI Subclass pursuant to the principles of promissory estoppel. (*See Exhibit A*).

58. Public Act 98-599 is an impairment of the contracts made between the State of Illinois and members of the ERI Subclass and as such, is an impairment of the contract in violation of Article 1 Section 16 of the Illinois Constitution, which 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.

59. There is a controversy between the named Plaintiffs and the members of the class on the one hand, and the Defendants on the other, as to the as to the validity of Public Act 98-599 and the other matters set forth in this Count, such that declaratory and injunctive relief is appropriate. The named Plaintiffs and the members of the class have no adequate remedy at law, and should the Defendant fail to pay the Plaintiffs their 3% Automatic Increase, the named Plaintiffs and the members of the class, they will suffer irreparable injury. Consequently, the Court should enter a preliminary injunctive relief ordering the establishment of an escrow into which the Defendant will pay the difference between the increases mandated by Public Act 98-599 and the 3% Automatic Increase, *pendente lite*.

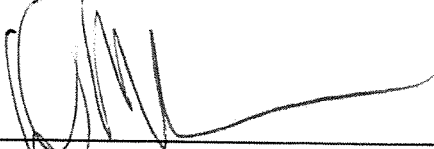
WHEREFORE, Plaintiffs Illinois State Employees Association Retirees and John Mundstock request the following relief:

- a. That the ERI Subclass, consisting of all retired SERS, GARS, TRS, and SURS participants with 20 years creditable service not subject to a collective bargaining

agreement and who availed themselves of the Early Retirement Incentive Program in 2002, be certified;

- b. That the Court declare Public Act 98-599 invalid as being in derogation of Article 13, Section 5 of the Illinois Constitution;
- c. That the Court enjoin the Defendants from implementing Public Act 98-599 and find that Sections 14-114, 2119.1(a), 16-101, and 15-101 of the Pension Code as they existed prior to Public Act 98-599 is still the law of Illinois;
- d. That the Court establish an escrow into which difference between the increases mandated by Public Act 98-599 and the 3% Automatic Increase, be placed *pendente lite*; and
- e. For such and other and further relief as the Court deems appropriate.

ILLINOIS STATE EMPLOYEES ASSOCIATION
RETIREES, ROBERT SILGER, GWENN
KLINGLER, BARBARA SCHOB, BARBARA
MAXEINER, and JOHN MUNDSTOCK, Plaintiffs,
for themselves and A Class of Persons similarly
situated

By: 
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