

members. The purpose and mission of the Association is to protect the interests of retired participants in the State Employees Retirement System, and in particular, their interests with respect to pension and other retirement benefits.

2. Plaintiff Lawrence Wort is an individual residing in Sangamon County, Illinois. He loyally served the State of Illinois for over 39 years, retiring in 2000 as an employee of the Department of Transportation. He is an annuitant member of the State Employee Retirement System (“SERS”) and is a member of the Association.

3. Plaintiff Gladys Hajek is an individual residing in Sangamon County, Illinois. She loyally served the State of Illinois for over 30 years, retiring in 2002 as an employee of the Department of Transportation. She is an annuitant member of SERS and is a member of the Association.

4. Plaintiff Linda Gueldener is an individual residing in Sangamon County, Illinois. She loyally served the State of Illinois for over 27 years, retiring in 2006 as an employee of the Department of Natural Resources. She is an annuitant member of SERS and is a member of the Association.

5. Plaintiff Maurine Richter is an individual residing in Sangamon County, Illinois. She loyally served the State of Illinois for over 25 years, retiring in 2002 as an employee of the Department of Natural Resources. She is an annuitant member of SERS and is a member of the Association.

6. Defendant Patrick Quinn is the Governor of the State of Illinois. Pursuant to Article V, Section 8 of the Illinois Constitution, “the Governor shall have the supreme executive power, and shall be responsible for the faithful execution of the laws.” Governor Quinn was the

architect of PA 98-599 and is ultimately responsible for the administration of the law, PA 98-599, challenged in this case. Governor Quinn is sued in his official capacity only.

7. Defendant Judy Baar Topinka is the Comptroller of the State of Illinois. Pursuant to Article V, Section 17 of the Illinois Constitution, “the Comptroller, in accordance with the law, shall maintain the State’s central fiscal accounts and order payments into 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, and as such, is involved in the administration of the law, PA 98-599, challenged in this case. Comptroller Topinka is also the Chairman of the Board of Trustees. Comptroller Topinka is sued in her official capacity only.

8. Defendant Dan Rutherford is the Treasurer of the State of Illinois. Pursuant to Article V, Section 18 of the Illinois Constitution, “the Treasurer, in accordance with law, shall be responsible for the safe keeping and investment of monies and securities deposited with him, and for their disbursement upon order of the Comptroller.” As such, Treasurer Rutherford is involved in the administration of the law, PA 98-599, challenged in this case. Treasurer Rutherford is sued in his official capacity only.

9. Defendant Board of Trustees of the State Employees Retirement System (“Board of Trustees”) is an independent agency of the State of Illinois, organized and existing pursuant to Article XIV of the Illinois Pension Code, 40 ILCS 5/14-101, *et seq.* The Board of Trustees is the agency primarily involved in the administration of the law, PA 98-599, challenged in this case. The Board of Trustees is sued in its official capacity only.

10. Plaintiff Association brings this lawsuit on behalf of its members. Those members otherwise have standing to sue in their own right; the interests sought to be protected in

this lawsuit are germane to the purpose of the organization, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

11. Plaintiffs Wort, Hajek, Gueldener and Richter bring this lawsuit on behalf of a class of persons which includes most of the membership of the Association, but which is also broader than the membership of the Association, namely all retired members of SERS and other persons, such as survivors and inactive employees entitled to SERS benefits but not yet receiving them, who are or would be entitled to receive an annuity based upon the law as it exists as of the date of filing of this Complaint and will exist through May 31, 2014. As set forth in most recent SERS Annual Report dated January 9, 2013, a copy of which is attached hereto as Exhibit A and is incorporated by reference, the number of persons in the class exceeds 60,000 persons, such that joinder of all members is impracticable. There are questions of law or fact common to the class, which common questions predominate over questions affecting only individual members. The representative parties will fairly and adequately protect the interests of the class.

12. Plaintiffs also seek the creation of a subclass of persons who availed themselves of early retirement incentive programs in 1991, 2002 or later. This subclass (the “ERI Subclass”) exceeds 10,000 persons. Plaintiffs Hajek and Richter are members of the ERI Subclass, having taken early retirement in 2002, and will adequately represent the subclass. The ERI Subclass involves only Count IV of this Complaint. With respect to all other counts, the claims of the ERI Subclass are identical to those of the other members of the class.

Background of the Dispute

13. This case concerns the constitutionality of Public Act 98-599, which was adopted by both Houses of the General Assembly on December 3, 2013 and was signed by Governor Quinn on December 5, 2013. PA 98-599 implements a number of changes in the various pension

systems of the State of Illinois, including SERS, the State Universities Retirement System (“SURS”), the Teachers Retirement System of the State of Illinois (“TRS”); the Public School Teachers' Pension and Retirement Fund ("PSTPRF") the General Assembly Retirement System ("GARS"). PA 98-599, however, omits to make any changes to the Judges’ Retirement System.

14. In 1970, when the current Illinois Constitution was drafted, the State-sponsored pension funds were actuarially underfunded. In February, 2012, Eric Madiar, counsel to Illinois Senate President John J. Cullerton and Parliamentarian of the Illinois Senate, accurately described the situation in a well-known treatise published on the internet and widely circulated in the halls of the General Assembly, *Is Welching On Public Pension Promises An Option For Illinois?*, as follows:

At the time of the Convention, the Pension Laws Commission reported that the General Assembly Retirement System (GARS) was 68.5% funded, while the State University Retirement System (SURS) was 47% funded. The remaining state-funded retirement systems had the following funding percentages: State Employees Retirement System (SERS) 43%; Judicial Retirement System (JRS) 32.3%; and Teachers Retirement System (TRS) 40%. The five State pension systems had an aggregate funding ratio of 41.8%. By comparison police and firemen pension funds were respectively only 33.8% and 19.1% funded. As noted at the outset, the five systems currently have a combined funding ratio of 43.3%.

15. The 1970 Constitution defined "membership in a pension or retirement system" as an "enforceable contractual right." As shown by the Con-Con debates, the drafters of the 1970 Constitution intended that the General Assembly would begin a process of properly funding the pension systems. In 1995, in the wake of litigation over the issue, the General Assembly adopted Public Act 88-0593, requiring the state during fiscal years 1996 through 2045 to make sufficient payments into the pension systems so that the State could fund the system at a 90% level by fiscal year 2045 and beyond. By the year 2000, the State had funded SERS to the level of 81.65%.

16. Since the year 2000, prior governors and the General Assembly have consistently failed to fund SERS and the other pension systems, preferring to use SERS and those other systems as lenders of last resort, and using funds which pursuant to PA 88-593, were to be earmarked for pensions, to pay for other pet projects. The General Assembly and past Governors have even declared pension "holidays", intentionally refusing to fund SERS in certain years. Because of 13 years of abuse, and as noted by Mr. Madiar, the funds are today about where they were in 1970.

17. While the General Assembly and prior Governors have failed to uphold the State's side of the enforceable contractual relationship contemplated by the Constitution, the State has at all times forced its employees and retirees to keep *their* side of the deal, at all times continuing to withhold the employees' contributions from their paychecks. There has never been a "holiday" for the Plaintiffs, either while they were employees or as retirees.

18. The preamble to PA 98-599, which purports to express the legislative intent of the State, is pure political theater and not a valid statement of intent, inasmuch as it ignores the history of the State refusing to honor its obligations to its employees and retirees. The preamble also ignores the State's repeated failure to comply with its own prior pension reform statutes, notably Public Act 88-0593. It ignores the fact that in 2000, SERS was over 80% funded and has purposefully been underfunded ever since. The preamble says:

At the time of passage of this amendatory Act of the 98th General Assembly, 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.

Ignoring the fact that the General Assembly's and prior governors' consistent failures to fund SERS and the other pension funds is the entire cause of the problem, the preamble continues:

Meanwhile, the State's annual pension contribution has substantially increased in recent years, and will continue to increase in coming years. The General Assembly recognizes that without 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.

19. Thus PA 98-599 rewrites history and proposes to balance the State budget on the backs of retirees, making retirees the scapegoat for the State's fiscal sins. In a similar vein, Defendant Governor Quinn issued a press release the day he signed SB1 into law as PA 98-599. The press release, a copy of which is attached hereto as Exhibit B, says:

Under the new law, the state will adopt an actuarially sound funding schedule that requires level payments and achieves 100 percent funding no later than the end of fiscal year 2044.

In other words, PA 98-599 purports to do precisely what PA 88-0593 was supposed to do— until prior Governors, in concert with the General Assembly, decided to ignore their constitutional duty to "be responsible for the faithful execution of the laws." There is no reason to believe that future Governors or legislatures will act any differently unless compelled to do so now by the Courts.

20. Governor Quinn's press release goes on to state:

Under the new law, there will be no reductions in the pension checks going out to current retirees. The law will also minimize the impact on the lower-earning, longer-serving employees. There will continue to be Cost of Living Adjustments (COLA); however, they will grow at a slower rate. For most employees, the COLA will be adjusted from the current 3 percent annually compounding increases that are unsustainable to a new formula based on years of service that includes protections for lower-earning, longer-serving employees.

The quoted language is simply untrue. There *will* be reductions in pension checks going out to current retirees. The Pension Code is a complete stranger to the term, "Cost of Living Adjustment."

The Specific Language of P.A. 98-599 at Issue Here

21. The issue in this case concerns PA 98-599's insertion of new subsection (a-1) to Section 14-114 of the Illinois Pension Code, 40 ILCS 5/14-114. Prior to enactment of PA 98-599, Section 14-114 of the Illinois Pension Code entitled all annuitants to an automatic 3% annual increase in their annuities (hereinafter, the "Automatic 3% Increase"), providing as follows:

§ 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%.

22. The new subsection (a-1), which becomes effective on June 1, 2014, substantially impairs and diminishes the Automatic 3% Increase. It states as follows:

(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.

History of the Automatic 3% Increase in Section 14-114 of Pension Code.

23. Section 14-114 of the Pension Code has been part of the Pension Code since 1969. It has been amended and renumbered a number of times, but history of the Section most relevant to this case are as follows:

A. Prior to 1969, a retiring SERS annuitant's annuity was fixed as of the date of his or her retirement.

B. Public Act 76-748, effective August 15, 1969, added Section 14-153.1, captioned "Automatic Increase in Service Retirement Allowance," to the Illinois Pension Code. The section provided that any employees retiring after December 31, 1969, having attained age 60, would, 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 1.5% annually, up to a maximum of 30% over the years. PA 76-748 also provided for an increase in SERS members' out-of-pocket monthly payroll deduction in an amount of .5% of salary effective January 1, 1970 and going forward, and it mandated that the State match the payroll deduction with an additional .5% contribution. Putting it another way, PA 76-748 mandated that future annuitants would pay for future automatic increases in their annuities through present payroll deductions, and that the State would match the employees' payroll deduction to pay for the automatic increases.

C. The national increase in the consumer price index ("CPI") in 1969 was 5.46%, far above the 1.5% annual automatic increase in annuity payments mandated by PA 76-748. In no sense did PA 76-748 attempt a "cost of living adjustment," which would have indexed the automatic increases to increases in the CPI or some other measure of inflation.

D. PA 77-292, effective July 15, 1971, eliminated the 30% cap and provided that the automatic rate of increase in the annuity—now termed an "allowance"—would be 2% per year. The national CPI increase in 1971 was 4.30%, more than double the 2% annual automatic increase mandated by PA 77-292.

E. PA 80-1408, effective August 28, 1978, amended Section 14-114 by raising the annual automatic increase—by then once again referred to as an "annuity"—to 3% annually. The national CPI increase in 1978 was 7.6%, more than two and a half times the 3% Automatic Increase.

F. Public Act 86-273, effective August 1989, provided that effective January 1, 1990, the 3% Automatic Increase would be in effect compounded. So, in 1991, an annuitant would receive 103% of 1990's payment; in 1992, 103% of 1991's payment, etc. The national CPI increase in 1989 was 4.83%, more than one and a half times as much as the 3% Automatic Increase.

24. While as shown by the press release, Exhibit B, Governor Quinn and certain legislators prefer to refer to the 3% Automatic Increase as a "Cost of Living Adjustment" in an effort to influence public opinion, 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, whether 1.5%, 2% or 3%, being a "cost of living adjustment" or "COLA." The 3% Automatic Increase simply is not a COLA under the commonly accepted definition of the term.

25. All of the members of the Association, all of the Class Plaintiffs, and all of the members of the Class worked (or are the survivors of such workers) during a period when the 3% Automatic Increase mandated by Section 14-114 of the Pension Code was in effect, and

retired at a time when the 3% Automatic Increase mandated by Section 14-114 of the Pension Code was in effect. They contributed the .5% of their salaries required by Section 14-114 to fund the 3% Automatic Increase.

The Controversy Regarding PA 98-599

26. Article XII, Section 5 of the Illinois Constitution of 1970, the Pension Protection Clause, 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.

27. There is a controversy between the Plaintiffs and the Defendants as to the Constitutional validity of Public Act 98-599, and in particular as to the new subsection (a-1) to Section 14-114 of the Illinois Pension Code. Plaintiffs contend that PA 98-599 and the new subsection (a-1) violate Article XII, Section 5 of the Illinois Constitution of 1970 by diminishing and impairing the future pension and retirement benefits of all SERS retirees, namely, by diminishing and impairing the 3% Automatic Increase. Defendants deny that such is the case, and they intend to implement PA 98-599 on its effective date.

28. Plaintiffs are threatened with irreparable injury and have no adequate remedy at law.

29. In order to protect the Plaintiffs during the pendency of this litigation, this Court should order the State to establish an escrow in the amount of the difference between the amounts to which the Plaintiffs would be entitled pursuant to Section 14-114 of the Pension Code as it existed as of the date of filing of this case and through May 31, 2014, and the amounts

to which they are entitled under the Pension Code as it takes effect on June 1, 2014, and thereafter.

WHEREFORE, Plaintiffs pray for the following relief:

- a. That the class, consisting of all SERS annuitants, be certified;
- b. That the Court declare Public Act 98-599 to be unconstitutional and invalid insofar as it diminishes and impairs the 3% Automatic Increase, and that the Court enjoin the implementation by the Defendants of the new Section 14-114 (a-1) of the Pension Code;
- c. That the Court establish an escrow *pendente lite* into which the difference between the amounts to which the annuitants would be entitled pursuant to Section 14-114 of the Pension Code as it existed as of the date of filing of this case and through May 31, 2014 and the same section as it exists as of July 1, 2014, be placed for ultimate distribution to the Plaintiff class should the Plaintiff class prevail, and for ultimate distribution to the State should the Defendants prevail; and
- d. For such other and further relief as the Court may deem appropriate.

COUNT II
(Equal Protection Clause)

1-25. Plaintiffs reallege paragraphs 1 through 25 of Count I as and for paragraphs 1 through 25 of this Count II.

26. Article I, Section 2 of the Illinois Constitution of 1970 states as follows:

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

27. Prior to adoption of Public Act 98-599, the provisions of the Pension Code governing SURS, TRS, PSTPRF, GARS and the Judges' Retirement System all provided for a 3% Automatic Increase, and contained provisions similar to Section 14-114 of the Pension Code.

PA 98-599 limits the 3% Automatic Increase, and contains provisions similar to those of the new subsection (a-1) of Section 14-114 of the Pension Code, with respect to all of these systems save one: the Judges' Retirement System.

28. Keeping the 3% Automatic Increase in full effect with respect to the Judges' Retirement System, while diminishing and impairing the 3% Automatic Increase set forth in Section 14-114 of the Pension Code and the similar 3% Automatic Increase provisions enjoyed by SURS, TRS, PSTPRF and GARS Annuitants, lacks a rational basis reasonably related to a legitimate governmental purpose.

29. There is a controversy between the Plaintiffs and the Defendants as to the validity of Public Act 98-599, and in particular as to the new subsection (a-1) of Section 14-114 of the Illinois Pension Code. Plaintiffs contend that the Public Act and the new subsection (a-1) violate Article I, Section 2 of the Illinois Constitution of 1970 by depriving the Plaintiffs of the equal protection of the laws vis-à-vis retired judges. Defendants deny that such is the case, and they intend to implement PA 98-599 on its effective date.

30. Plaintiffs are threatened with irreparable injury and have no adequate remedy at law.

31. In order to protect the Plaintiffs during the pendency of this litigation, this Court should order the State to establish an escrow in the amount of the difference between the amounts to which the Plaintiffs would be entitled pursuant to Section 14-114 of the Pension Code as it existed as of the date of filing of this case and through May 31, 2014, and the amounts to which they are entitled under the Pension Code as it takes effect on June 1, 2014, and thereafter.

WHEREFORE, Plaintiffs pray for the following relief:

- a. That the class, consisting of all SERS annuitants, be certified;
- b. That the Court declare Public Act 98-599 to be unconstitutional and invalid insofar as it diminishes and impairs 3% Automatic Increase for Plaintiffs and other retirees, but not for retired judges; and that the Court enjoin the implementation by the Defendants of the new Section 14-114 (a-1) of the Pension Code;
- c. That the Court establish an escrow *pendente lite* into which the difference between the amounts to which the annuitants would be entitled pursuant to Section 14-114 of the Pension Code as it existed as of the date of filing of this case and through May 31, 2014 and the same section as it exists as of June 1, 2014, be placed for ultimate distribution to the Plaintiff class should the Plaintiff class prevail, and for ultimate distribution to the State should the Defendants prevail; and
- d. For such other and further relief as the Court may deem appropriate.

**COUNT III
(Impairment of Contracts Clause)**

1-25. Plaintiffs reallege paragraphs 1 through 25 of Count I as and for paragraphs 1 through 25 of this Count III.

26. The Constitution defines membership in SERS as an “enforceable contractual relationship.” During their tenure at the State, the Plaintiffs continually paid their .5% contributions in exchange for their entitlement to the 3% Automatic Increase. Moreover, the Plaintiffs were continually reminded of the 3% Automatic Increase in numerous publications, seminars, etc. This has occurred for at least the last 40 years:

A. The 1982 Benefits Handbook, distributed to most if not all State employees at the time, is attached hereto as Exhibit C-1. It said, on page 11:

If you retire after age 60, you will receive a 3% increase in your pension on January 1 following your first full year of retirement. Future increases of 3% of your original pension will also be made each January 1 thereafter. Future increases in your pension will not be limited by the 75% maximum.

If you retire before age 60, you will receive a 3% increase in your pension on January 1 after you reach age 60 if you have been retired for one full year.

If you retire with 35 or more years of credited service, you are eligible for your first increase on the January 1 following your first full year of retirement whether or not you have then reached age 60.

B. The 1992 Benefits Handbook, distributed to most if not all State employees at the time, is attached hereto as Exhibit C-2. It said, on page 8:

If you are a retiree of the State Employees Retirement System, you will receive a 3 % increase in your pension on January 1 following your first full year of retirement or attainment of age 60, whichever is later. If you retire with 35 or more years of service, you are eligible for your first increase on the January 1st following your first full year of retirement, whether or not you have reached age 60. Future increases of 3 % of your current pension will also be made each January 1 thereafter.

C. The 2001 Benefits Handbook, distributed to most if not all State employees at the time, is attached hereto as Exhibit C-3. It said, on page 8:

SERS retirees receive a 3% increase in their pensions on January 1 following their first full year of retirement, or age 60, whichever is later. If you retire using the Rule of 85, you are eligible for your first increase on the January 1 following your first full year of retirement, even if you are not age 60. Future increases of 3% of your current pension will also be made each January 1 thereafter. Future increases are not limited by the 75% maximum. If you retired under the alternative formula, you will receive a 3% increase to your pension on January 1 following your first full year of retirement or age 55, whichever is later. Future increases are not limited by the 80% maximum.

D. The current SERS Benefits Handbook, 2011 edition, was distributed to most if not all State employees, and is posted on the SERS website. It is attached hereto as Exhibit C-4. It says, on page 19:

If you retire under the Rule of 85, you are eligible for your first 3% increase on January 1 following your first full year of retirement, even if you are not age 60. If you retire at age 60 or older, you will receive a 3% pension increase every year on January 1, following your first full year of retirement. If you retire before age 60 with a reduced retirement benefit, you will receive a 3% pension increase every January 1 after you turn age 60 and have been retired at least one full year. These pension increases are not limited by the 75% maximum.

E. The current SERS Annual Report, Exhibit A to this Complaint, similarly describes (page 66) the 3% automatic increase for Tier 1 employees—that is, for employees hired prior to July, 2011. A similar description is contained in at least the last 10 years' SERS annual reports, all of which are and have been available on the SERS website.

27. In diminishing and limiting the 3% Automatic Increase, PA 98-599 impairs the Plaintiffs' enforceable contractual rights in violation of Article I, Section 16 of the Illinois Constitution, which provides in relevant part:

No...law impairing the obligation of contracts...shall be passed.

28. There is a controversy between the Plaintiffs and the Defendants as to the validity of Public Act 98-599, and in particular as to the new subsection (a-1) to Section 14-114 of the Illinois Pension Code. Plaintiffs contend that the Public Act and the new subsection (a-1) violate Article I, Section 16 of the Illinois Constitution insofar as they diminish and impair the Plaintiffs' contractual rights. Defendants deny that such is the case, and they intend to implement PA 98-599 on its effective date.

29. Plaintiffs are threatened with irreparable injury and have no adequate remedy at law.

30. In order to protect the Plaintiffs during the pendency of this litigation, this Court should order the State to establish an escrow in the amount of the difference between the amounts to which the Plaintiffs would be entitled pursuant to Section 14-114 of the Pension Code as it existed as of the date of filing of this case and through May 31, 2014, and the amounts to which they are entitled under the Pension Code as it takes effect on June 1, 2014, and thereafter.

WHEREFORE, Plaintiffs pray for the following relief:

- a. That the class, consisting of all SERS annuitants, be certified;
- b. That the Court declare Public Act 98-599 to be an unconstitutional impairment of contracts and invalid insofar as it diminishes and impairs the 3% Automatic Increase, and that the Court enjoin the implementation by the Defendants of the new Section 14-114 (a-1) of the Pension Code;
- c. That the Court establish an escrow *pendente lite* into which the difference between the amounts to which the annuitants would be entitled pursuant to Section 14-114 of the Pension Code as it existed as of the date of filing of this case and through May 31, 2014 and the same section as it exists as of July 1, 2014, be placed for ultimate distribution to the Plaintiff class should the Plaintiff class prevail, and for ultimate distribution to the State should the Defendants prevail; and
- d. For such other and further relief as the Court may deem appropriate.

COUNT IV
(Impairment of Contract Clause—ERI Subclass)

1-25. Plaintiffs reallege the paragraphs 1 through 25 of Count I as and for paragraphs 1 through 25 of this Count IV.

26. This Count IV is brought by Plaintiffs Hajek and Richter on behalf of the ERI Subclass and relates only to the ERI Subclass.

27. 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 provided for the purchase by eligible annuitants of additional service credits, and promised that the ERI Participants would have continued entitlement to the 3% Automatic Increase. See, e.g., the ERI website attached hereto as Exhibit D.

28. According to a report of the Commission on Government Forecasting and Accountability attached hereto as Exhibit E, in reliance on the 2002 ERI Program, the over 10,000 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 costs over \$2.9 billion in the years 2003-2012.

29. While much smaller in terms of the number of retirees involved and the fiscal impact on the State, early retirement incentive programs similar to the 2002 program were announced in 1991 and in 2005, and the persons who availed themselves of those early retirement programs are included in the ERI subclass.

30. 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.

31. In eliminating the 3% Automatic Increase, 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 I, Section 16 of the Illinois Constitution, which provides in relevant part:

No...law impairing the obligation of contracts...shall be passed.

32. There is a controversy between the ERI Subclass and the Defendants as to the validity of Public Act 98-599, and in particular as to the new subsection (a-1) of Section 14-114 of the Illinois Pension Code. Members of the ERI Subclass contend that the Public Act and the new subsection (a-1) violate Article I, Section 16 of the Illinois Constitution insofar as they diminish and impair the Plaintiffs' contractual rights obtained by participation in the Early Retirement Incentive programs of the State, which are in addition to the contractual rights enjoyed by them simply by being members of SERS. Defendants deny that such is the case, and they intend to implement PA 98-599 on its effective date.

33. Plaintiffs are threatened with irreparable injury and have no adequate remedy at law.

34. In order to protect the ERI Subclass during the pendency of this litigation, this Court should order the State to establish an escrow in the amount of the difference between the amounts to which the Plaintiffs would be entitled pursuant to Section 14-114 of the Pension Code as it existed as of the date of filing of this case and through May 31, 2014, and the amounts to which they are entitled under the Pension Code as it takes effect on July 1, 2014, and thereafter.

WHEREFORE, Plaintiffs pray for the following relief:

- a. That the subclass, consisting of all ERI Participants, be certified;
- b. That the Court declare Public Act 98-599 to be an unconstitutional impairment of contracts and invalid insofar as it limits the 3% Automatic Increase with respect to members of

the ERI Subclass, and that the Court enjoin the implementation by the Defendants of the new Section 14-114 (a-1) of the Pension Code;

c. That the Court establish an escrow *pendente lite* into which the difference between the amounts to which the annuitants would be entitled pursuant to Section 14-114 of the Pension Code as it existed as of the date of filing of this case and through May 31, 2014 and the same section as it exists as of July 1, 2014, be placed for ultimate distribution to the Plaintiff class should the Plaintiff class prevail, and for ultimate distribution to the State should the Defendants prevail; and

d. For such other and further relief as the Court may deem appropriate.

RETIRED STATE EMPLOYEES ASSOCIATION
an Illinois not-for-profit corporation, and LAWRENCE
WORT, GLADYS HAJEK, LINDA GUELDENER
and MAURINE RICHTER, for themselves and on behalf
of a class of persons similarly situated, Plaintiffs,

By: _____
One of Their Attorneys