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

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

ORDER

This matter comes before the Court in these consolidated cases on the plaintiffs' joint motion for partial summary judgment, the *ISEA*, *RSEA*, *Heaton* and *Harrison* plaintiffs' joint motion for judgment on the pleadings as to the affirmative defense, or in the alternative, to strike the affirmative defense, and the *SUAA* plaintiffs' motion to strike the affirmative defense (the "Plaintiffs' Motions").

The plaintiffs in these consolidated cases allege that Public Act 98-0599 (the "Act") violates the Pension Protection Clause of the Illinois Constitution (Article XIII, §5) and that the Act is unconstitutional and void in its entirety. In their affirmative defense, the Defendants assert that the Act is justified as an exercise of the State's reserved sovereign powers or police powers. The Court hereby rules in favor of the plaintiffs on each motion and further finds and orders as follows:

1. The Pension Protection Clause of the Illinois Constitution states: "Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired." (Illinois Constitution, Article XIII, §5.) This constitutional language is "plain" and "unambiguous," and, therefore, the Pension Protection Clause is "given effect without resort to other aids for construction." *Kanerva v. Weems*, 2014 IL 115811, ¶¶ 36, 41-42. Under the Pension Protection Clause, "it is clear that if something qualifies as a benefit of the enforceable contractual relationship resulting from membership in one of the State's pension or retirement systems, it cannot be diminished or impaired." *Id.*, ¶ 38. The Illinois

legislature could not have been more clear that any attempt to diminish or impair pension rights is unconstitutional.

2. The Court finds that, on its face, the Act impairs and diminishes the benefits of membership in State retirement systems in multiple ways, including the following:

a. The Act adds new language to the Pension Code which provides that, on or after the Act's effective date, the 3% compounded automatic annual increases (AAIs) that have been mandated by the Pension Code for many years shall instead be "calculated as 3% of the lesser of (1) the total annuity payable at the time of the increase, including previous increases granted, or (2) $1,000 multiplied by the number of years of creditable service upon which the annuity is based . . . ." See the Act's amendments to 40 ILCS 5/2-119.1(a-1), 40 ILCS 5/15-136(d-1), 40 ILCS 5/16-133.1(a-1); see also the Act's amendments to 40 ILCS 5/14-114(a-1). The defendants admit that these amendments will reduce the AAI amounts that certain pension system members receive. See, *e.g.*, Answer to *Heaton* Amended Complaint, ¶¶ 43, 45, 47, 51, 55, 57, 61, 65; Answer to *Harrison* Complaint, ¶¶ 93-96, 133-140.

b. The Act also provides that State retirement system members who have not begun to receive a retirement annuity before July 1, 2014, will receive no AAI at all on alternating years for varying lengths of time, depending on their age. See the Act's amendments to 40 ILCS 5/2-119.1(a-2), 40 ILCS 5/14-114(a-2), 40 ILCS 5/15-136(d-2), 40 ILCS 5/16-133.1(a-2). The defendants admit that these amendments will reduce the AAI amounts that certain pension system members receive. See, *e.g.*, Answer to *Heaton* Amended Complaint, ¶¶ 13, 47, 51, 57, 61, 65; Answer to *Harrison* Complaint, ¶ 98; Answer to *SUAA* Amended Complaint, ¶¶ 142-45.

c. The defendants admit that Public Act 98-0599 also imposes a new cap on the

pensionable salary of members of certain State retirement systems. See, *e.g.*, the Act's amendments to 40 ILCS 5/16-121; see also, *e.g.*, Answer to *Harrison* Complaint, ¶¶ 100-04; Answer to *Heaton* Amended Complaint, ¶¶ 49, 67. That cap is the greater of: (1) the salary cap that previously applied only to members who joined the retirement system on or after January 1, 2011; (2) the member's annualized salary as of June 1, 2014; or (3) the member's annualized salary immediately preceding the expiration, renewal, or amendment of an employment contract or collective bargaining agreement in effect on June 1, 2014. See the Act's amendments to 40 ILCS 5/14-103.10(h), 40 ILCS 5/15-111(c), 40 ILCS 5/16-121; see also the Act's amendments to 40 ILCS 5/2-108. The new cap will reduce annuity payments, which are based in part on a pension system member's pensionable salary.

d. Public Act 98-0599 also raises the retirement age for members of certain State retirement systems on a sliding scale based upon one's age. See the Act's amendments to 40 ILCS 5/2-119(a-1), 40 ILCS 5/14-107(c), 40 ILCS 5/15-135(a-3), 40 ILCS 5/16-132; see also, *e.g.*, Answer to *Harrison* Complaint, ¶¶ 106-07; Answer to *Heaton* Amended Complaint, ¶¶ 48, 52, 58, 62, 66; Answer to *SUAA* Amended Complaint, ¶ 68.

e. The Act also alters "the method for determining the 'effective rate of interest' used to calculate pensions for members under the money-purchase formulas included in Articles 15 and 16 of the Pension Code." See Defendants' Affirmative Matter, ¶ 10; Answer to *SUAA* Amended Complaint, ¶¶ 64-67; see also the Act's amendments to 40 ILCS 5/15-125 and 40 ILCS 5/16-112. It is uncontested that this change, too, would reduce pension annuity payments.

3. The Act without question diminishes and impairs the benefits of membership in State retirement systems. Illinois Courts have consistently held over time that the Illinois Pension Clause's protection against the diminishment or impairment of pension benefits is absolute and

without exception. The Illinois Supreme Court has "consistently invalidated amendment to the Pension Code where the result is to diminish benefits." McNamee v. State, 173 Ill. 2d 433, 445 (1996). In their affirmative matter, the defendants assert that the Act is nonetheless justified as an exercise of the State's reserved sovereign powers or police powers. The Court finds as a matter of law that the defendants' affirmative matter provides no legally valid defense. The Court "may not rewrite the pension protection clause to include restrictions and limitations that the drafters did not express and the citizens of Illinois did not approve." *Kanerva*, 2014 IL 115811, ¶ 41. The Pension Protection Clause contains no exception, restriction or limitation for an exercise of the State's police powers or reserved sovereign powers. Illinois courts, therefore, have rejected the argument that the State retains an implied or reserved power to diminish or impair pension benefits. See *Felt v. Bd. of Trustees of Judges Retirement System*, 107 Ill.2d 158, 167-68 (1985) (holding that, to recognize such a power, "we would have to ignore the plain language of the Constitution of Illinois"); *Kraus v. Bd. of Trustees of Police Pension Fund of Vill. of Niles*, 72 Ill. App. 3d 833, 851 (1979).

4. Because the Act diminishes and impairs pension benefits and there is no legally cognizable affirmative defense, the Court must conclude that the Act violates the Pension Protection Clause of the Illinois Constitution. The Court holds that Public Act 98-0599 is unconstitutional.

5. The Act contains a "[s]everability and inseverability" clause. See Public Act 98-0599, §97. That provision states that the Act's changes to 39 distinct sections and subsections of various statutes "are mutually dependent and inseverable from one another," but that the Act is severable as a general proposition. *Id.* That list of 39 inseverable provisions includes certain of the benefit-reduction provisions that this Court has held to be unconstitutional. Therefore, all 39 provisions identified in the Act's "[s]everability and inseverability" clause must fail. Those

inseverable provisions are significant to the overall operation of the Act. They include, for example, the Act's mechanism for supposedly guaranteeing funding of the State pension systems. See Public Act 98-0599, §97. In addition, "severability" language is not dispositive. Notwithstanding the presence of a severability clause, legislation is not severable where, as here, it is a broad legislative package intended to impose sweeping changes in a subject area, and the unconstitutional provisions of that package are important elements of it. See *Cincinnati Ins. Co. v. Chapman*, 181 Ill.2d 65, 81-86 (1998); see also *Best v. Taylor Mach. Works*, 179 Ill.2d 367, 459-67 (1997). The Act's provisions "are all part of an integral bipartisan package." See 98th Ill. Gen. Assem., Senate Pro., Dec. 3, 2013, at 4 (Sen. Raoul). The Court holds that Public Act 98-0599 is inseverable and void in its entirety.

6. The defendants have attempted to create a factual record to the effect that, if a reserved sovereign power to diminish or impair pensions existed, the facts would justify an exercise of that power. The defendants can cite to no Illinois case that would allow this affirmative defense. Because the Court finds that no such power exists, it need not and does not reach the issue of whether the facts would justify the exercise of such a power if it existed, and the Court will not require the plaintiffs to respond to the defendants' evidentiary submissions. The plaintiffs having obtained complete relief, the Court also need not address at this time the plaintiffs' additional claims that the Act is unconstitutional or illegal on other grounds. *See Kanerva*, 2014 IL 115811, ¶ 58. In summary, the State of Illinois made a constitutionally protected promise to its employees concerning their pension benefits. Under established and uncontroverted Illinois law, the State of Illinois cannot break this promise.

WHEREFORE, the Court orders as follows:

a. The Plaintiffs' Motions are granted. The defendants' cross-motion for summary judgment is denied, with prejudice, because the Court finds that there is no police power or reserved

sovereign power to diminish pension benefits. Pursuant to 735 ILCS 5/2-701, the Court enters a final declaratory judgment that Public Act 98-0599 is unconstitutional and void in its entirety;

b. The temporary restraining order and preliminary injunction entered previously in this case is hereby made permanent. The defendants are permanently enjoined from enforcing or implementing any provision of Public Act 98-0599;

c. Pursuant to Illinois Supreme Court Rule 304(a), the Court finds that there is no just reason for delaying either enforcement of this order or appeal or both.

Date: 11/21/14

ENTERED:

Judge John W. Belz