No. 122905

IN THE SUPREME COURT OF ILLINOIS

DAVID PICCIOLI, *Plaintiff-Appellant,* v. BOARD OF TRUSTEES OF THE TEACHERS' RETIREMENT SYSTEM, et al., *Defendants-Appellees.*	On Direct Appeal from the Circuit Court of the Seventh Judicial Circuit, Sangamon County, Illinois No.: 15-MR-43 The Honorable Ryan M. Cadagin, Judge Presiding

REPLY BRIEF OF PLAINTIFF-APPELLANT DAVID PICCIOLI

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ARGUMENT

Public Act 94-1111 (the "2007 Act") granted David Piccioli rights to a Teachers' Retirement System ("TRS") pension for his prior public sector union service. Pub. Act 94-1111 (eff. Feb. 27, 2007) amending 40 ILCS 5/16-106. The Act also prompted him to obtain a teaching certificate and to work as a teacher. A 10; C 189. Moreover, the 2007 Act is why Piccioli struggled to save $192,668, over the course of four years, in exchange for promised TRS benefits. A 10-12; C 382-83.

Public Act 97-0651 (the "2012 Act"), however, declared the 2007 Act void *ab initio* and eliminated all pension rights Piccioli had secured based on existing law. Pub. Act 97-0651 (eff. Jan. 5, 2012) amending 40 ILCS 5/16-106; A 32-33; A 13; C 288-89. As this Court ruled in *Heaton v. Quinn*, 2015 IL 118585, "once an individual begins work and becomes a member of a public retirement system, any subsequent changes to the Pension Code that would diminish the benefits conferred by membership in the retirement system cannot be applied to that individual." *Id.* at ¶ 46. Because Piccioli clearly had embarked on employment in a covered position and had become a TRS member under the law in effect in 2007, the 2012 Act's absolute eradication of those vested retirement rights violates the Illinois Constitution's Pension Protection Clause. This Court should rule unconstitutional the General Assembly's unilateral destruction of pension rights for Piccioli's pre-2007 public sector union service.

Piccioli asserts that TRS and its counsel lack standing to attack the 2007 Act's constitutionality. Piccioli rests on the arguments advanced in his opening brief. Pl. Br. at 9-12. TRS and its Board are charged with administering funds on behalf of members; it is not their prerogative to advocate against one of their own members, especially not by launching constitutional attacks on legislation that does not directly harm the Board or TRS and, so, cannot be considered unconstitutional as applied to them.

Moreover, TRS' special legislation argument must fail because it ignores the strong presumption of validity accorded to legislative enactments and cannot satisfy either of the two elements necessary to invalidate a statute as unconstitutional special legislation. Legislation is presumed valid. *Nevitt v. Langfelder*, 157 Ill. 2d 116, 124 (1993). And so TRS, as the party challenging constitutionality, bears the high burden of establishing the 2007 Act's invalidity. *Id.*; *Crusius v. Illinois Gaming Bd.*, 216 Ill. 2d 315, 332 (2005) ("It is not our place to second-guess the wisdom of a statute that is rationally related to a legitimate state interest, *contentious though that statute may be*") (emphasis added). "[T]he prohibition against special legislation does not mean that a law must affect every person in the State alike. Rather, it means that a law shall operate uniformly throughout the State in all localities and on all persons *in like circumstances* and conditions." *Youhas v. Ice*, 56 Ill. 2d 497, 500 (emphasis added).

The legislature clearly has the authority to make classifications as long as there is a reasonable basis for differentiating between the class of persons to which the law applies and the class to which it does not. *Id.* In fact, this Court highlighted the legislature's "broad latitude and discretion" in exercising that authority. *Big Sky Excavating, Inc. v. Illinois Bell Telephone Co.,* 217 Ill. 2d 221, 240 (2005). Courts sustain special legislation challenges only if the classification is plainly unreasonable and palpably arbitrary. *Nevitt*, 157 Ill. 2d at 124.

Importantly, classifications need not "be drawn with mathematical precision" because "even if the difference be one of degree, only, it may be sufficiently great to require a difference in methods of [government] action." *Id.* The legislature's judgments "in crafting a statute are not subject to courtroom fact finding and may be based on rational speculation unsupported by evidence or empirical data." *People ex rel. Lumpkin v. Cassidy*, 184 Ill. 2d 117, 124 (1998). Indeed, under the rational basis test, which governs here, this Court may hypothesize reasons to support the 2007 Act even if those reasons did not motivate legislative action. *Id.* Advancing Illinois' economic or financial interests constitute reasonable bases warranting a legislative distinction. *Crusius, 216 Ill. 2d* at 332.

As discussed in Piccioli's opening brief, this Court's special legislation inquiry is twofold. One, it compels TRS to demonstrate that the 2007 Act excluded IEA employees who were similarly situated to Piccioli from buying TRS credit for their prior union service. Two, even if future union employees

were excluded from purchasing past service credit, TRS must show that this exclusion may not rationally be construed to serve a legitimate government goal. *Crusius*, 216 Ill. 2d at 325; Pl. Br. at 13. TRS fails both tests.

TRS' argument hinges on the flawed assumption that IEA employees did not know about Senate Bill 36, the antecedent to the 2007 Act, before it became law. Def. Br. at 36-40. But there is no evidentiary, legal or logical basis for TRS' strained assumption that the 2007 Act was designed to benefit only IFT employees, nor that IEA employees were unaware of the 2007 Act.[1]

In fact, IEA, along with TRS, Chicago Teachers Union, American Federation of State, County and Municipal Employees ("AFSCME") Council 31, Chicago Teachers Pension Fund and others, filed Record of Committee Witness Statements, or so-called witness slips, for Senate Bill 36 in both Illinois' Senate and House of Representatives.[2] IEA's witness slip, filed November 29, 2006, amply demonstrates that IEA was well aware of the bill as it moved towards becoming law.

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[1] TRS reluctantly acknowledges the reality that this record provides no support for its claim that IEA employees were unaware of Senate Bill 36 by attempting to invert the burden of proof. Def. Br. at 39 (arguing that "nothing in the record indicates that anyone in IEA knew about it before the Governor signed it into law.")

[2] Before filing this brief, Piccioli submitted a Motion to Take Judicial Notice of those witness slips. That motion incorporates certified copies of those public records in the form they are kept by the Illinois Secretary of State's State Archives.

Moreover, contrary to TRS' suggestion, there is nothing unusual about lobbyists proposing bills. Def. Br. at 36. Significantly, Piccioli was not part of IFT's management and he had nothing to do with drafting or advocating Senate Bill 36. C 358; C 547; C 380. While Piccioli was aware of the proposed law, he did not know that IFT worked on it until several years after its enactment. C 358; C 379-80.

Further, it defies credulity that members of a public sector union which has long lobbied the legislature on a variety of issues were unaware of Senate Bill 36, a key pension law, while it was making its way through the legislative process and to the Governor's desk for approval. This is especially true with pension bills, which tend to garner widespread attention from public sector unions and the public. E.g., Eric M. Madiar, *Is Welching on Public Pension Promises an Option for Illinois? An Analysis Article XIII, Section 5 of the Illinois Constitution*, 48 J. MARSHALL L. REV. 167, 168-172, 184-85; Justin Cummins & Meg Luger Nikolai, *ERISA Reform in a Post-Enron World*, 39 J. MARSHALL L. REV. 563, 563-573. Bills are considered and debated in open session, with copies available on the General Assembly's website and accessible to all. See Ill. Const. 1970, art. IV, § 5, cl. c ("Sessions of each house of the General Assembly shall be open to the public"); Ill. Const. 1970, art. IV, § 7 ("Committees of each house, joint committees of the two houses and legislative commissions shall give reasonable public notice of meetings, including a statement of subjects to be considered"); 5 ILCS 140/1 *et seq.*

Nothing supports that the General Assembly was closed to the public during the debate or passage of Senate Bill 36. Rather, the record indicates that these proceedings were open to the public as required by law. See C 676-85; C 686-87. The legislative history shows that House Amendment 1 to Senate Bill 36, which contained the text permitting purchase of TRS credit for past service, was first introduced on November 16, 2006 and passed the House on November 28, 2006, three months before it was enacted. C283-86 (reciting the bill status of Senate Bill 36). Indeed, the reforms found in the 2007 Act appeared on the public record for three and a half months before they became law. *Id.*

In addition, nothing suggests that any IEA employees wished, much less attempted, to exercise their option to purchase TRS credit for past union service. *Elementary School District 159 v. Schiller*, 221 Ill. 2d 130, 148 (2006) ("*Schiller*") confirms that, to be similarly situated under the first prong of the special legislation test, "the mere fact that [a party] exists is not enough." *Id.* at 152-53. Instead, that entity must have actively "sought" the benefit it claims to have been denied. *Id.* Contrary to TRS' argument, *Schiller* is no outlier in compelling a special legislation plaintiff to name someone who actually attempted pursuing, but was denied, the benefit in question. Def. Br. at 40-42. *Big Sky* imposed the same requirement. *Big Sky*, 217 Ill. 2d at 236-37 (decreeing that no other telecommunications carriers were similarly situated to Illinois Bell because "[i]f any telecommunications carrier believed that [the challenged provision] afforded Illinois Bell an advantage it was denied, there is no evidence of it in the record

before us.")[3] Therefore, the fact that no one except Piccioli pursued the benefit offered by the 2007 Act means that IEA employees who held a bachelor's degree in early 2007 are not similarly situated under this Court's special legislation jurisprudence.

Gaining retirement benefits offered by the 2007 Act was no small feat. Beyond requiring a teaching certification, service as a teacher (by February 27, 2007, the 2007 Act's effective date) and an irrevocable[4] application to become a TRS member (by August 27, 2007, within six months of the 2007 Act's effective date), the law also required significant monetary contributions and included substantial and mandatory interest charges. A 30; C 280; see also C 236 (TRS-issued memorandum confirming these terms); C 237 (so-called "irrevocable election" on TRS letterhead executed by Piccioli). TRS attempts to turn on its head both the presumption of openness and its burden of proof. This Court should decline TRS' invitation to ignore the presumption that legislative proceedings are public while accepting the wholly unproven assumption that IEA employees were ignorant of proposed and pending changes to pension law that were a subject of debate and deliberation for several months. It is much more likely that IEA workers chose to forgo the 2007 Act's retroactive buy-back option

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[3] In *Schiller*, *Big Sky* and *Crusius* the special legislation challengers failed to identify anyone who was similarly situated to the entity or individual benefitting from the legislation and who was arbitrarily excluded. All of those challengers ultimately failed.

[4] TRS seems to suggest that this irrevocability applied to TRS' *members* only, but not to TRS.

because IEA, unlike IFT, offered its employees a comprehensive, private retirement account that obviated the appeal of a public pension. See C 214 (testimony from TRS' corporate representative that, at the time, only two TRS members were from IEA; nearly 50 were IFT employees); C 497 (historical summary concerning teachers unions' membership in TRS stating that in 1986-87 there were 15 reported IFT members and one IEA member).

To the extent that TRS argues that the 2007 Act excluded future union employees from purchasing past service credit, TRS has a point. However, such a temporal limitation is by no means arbitrary. To be sure, terms of employment and, specifically, eligibility for pension benefits commonly, and constitutionally, turn on timing. E.g., *Matthews v. Chicago Transit Authority*, 2016 IL 117638, ¶ 59 ("[T]his court has consistently held that the contractual relationship protected by section 5 of article XIII is governed by the actual terms of the contract or pension plan in effect *at the time* the employee becomes a member of the retirement system") (emphasis added); *Heaton*, 2015 IL 118585, ¶ 5 ("The amount of a member's retirement annuity and how soon a member is eligible to begin receiving annuity payments depends on *when* the member first began making contributions into one of the retirement systems") (emphasis added); 40 ILCS 5/16-106.41 (defining "tier 1 member" as a member who first became a TRS participant before January 1, 2011; tier 1 members enjoy different, and generally better, pension terms than tier 2 members). Moreover, the legislature had to limit eligibility to purchase past service credit to a finite number of

employees then employed by IEA and IFT so that the 2007 Act would not pose a cost to the State. In other words, the legislature's expectation of fiscal stability was contingent on capping pension beneficiaries, a cap lawmakers achieved by imposing a deadline. As this Court confirmed in *Crusius*, promoting the State's economic goals is a laudable and reasonable objective that withstands a special legislation attack.

Notably, *Crusius* upheld a more restrictive classification and temporal cutoff than the 2007 Act employs. That case adjudicated a special legislation challenge to the Riverboat Gambling Act. The Riverboat Gambling Act creates up to ten riverboat gambling licenses for certain Illinois waterways. *Crusius*, 216 Ill. 2d at 318-19. Emerald Casino, Inc. ("Emerald") held one of those licenses for its operation in East Dubuque. *Id.* at 319. That location eventually became economically infeasible, and the casino shuttered in July 1997. *Id.* at 319-20. While Emerald's operations lay dormant in June 1999, the General Assembly amended the Riverboat Gambling Act by adding the following clause:

> A licensee that was not conducting riverboat gambling on January 1, 1998 may apply to the Board for renewal and approval of relocation to a new home dock location . . . and the [Gaming] Board shall grant the application [once the unit of local government the licensee seeks to move to approves the move].

230 ILCS 10/11.2(a).

Faced with the question of whether this amendment amounted to a private bill favoring only Emerald, this Court applied its two-pronged special legislation analysis. *Crusius*, 216 Ill. 2d at 325. *Crusius* swiftly resolved the first prong by

pointing to the amendment's distinct deadline to qualify for the license, reasoning that it is both clear that the amendment discriminates in favor of a select group by bestowing a benefit only on those licenses that were "not conducting riverboat gambling on January 1, 1998," and that Emerald was the sole licensee meeting that description. *Id.* at 326. Critically, the deadline for qualifying for benefits under the Riverboat Gambling Act's amendment predates the amendment's effective date. Because this benefit-eligibility date consisted of a single day, more than a year before the amendment's passage, it is much more restrictive than the 2007 Act's effective-date eligibility cutoff.

This Court tackled the test's second prong by examining whether the classification of a single casino was rationally related to a legitimate state interest. *Id. Crusius* consulted the Riverboat Gambling Act's legislative-intent provision which listed economic development among its objectives. *Id.* at 315-16. In light of that legislative goal, this Court deemed the amendment defensible and not unconstitutional because, at the time of the amendment's enactment, Emerald was the lone riverboat gambling licensee whose operations lay dormant. "It was rational for the legislature to conclude that recommencing Emerald's operations would promote the economic goals of the Riverboat Gambling Act," the Court decreed. *Id.* at 316. It was also reasonable for the legislature to focus its attention exclusively on Emerald, as Emerald was the sole nonoperational licensee. *Id.* This Court remarked that it must abstain from second-guessing the legislature's means of achieving an objective and uphold the amendment because it fostered

economic development even if the new law conflicted with other statutory goals. *Id.* at 331-32.

Similarly, in amending the Pension Code, the legislature identified achieving "fiscal stability for the State and its pension systems" as a preeminent goal. Pub. Act 98-599, § 1 (eff. June 1, 2014); *Heaton*, 2015 IL 118585, ¶ 24. That goal is served by limiting the right to draw from TRS' funds. In short, making the right to purchase past service credit subject to an application deadline is rationally related to preserving TRS' stability and solvency. In addition, the Pension Code provides that TRS exists to "for the purpose of providing retirement annuities and other benefits for teachers, annuitants and beneficiaries," a mission that could not be advanced if access to the system's funds was unrestricted. 40 ILCS 5/16-101. Accordingly, the 2007 Act's cutoff is reasonable to protect TRS' solvency and to ensure its provision of retirement benefits for years to come.

The facts of *Board of Education v. Peoria Federation of Support Staff, Security/Policeman's Benevolent & Protective Association Unit No. 114*, 2013 IL 114853 ("*Board of Education*") distinguish it from the instant dispute. TRS reads *Board of Education* far too broadly. *Board of Education* did not question the validity of sunset provisions generally. Instead, it expressly acknowledged that deadlines—including those that occur on, or even before, a law's effective date—may be constitutional as long as a viable rationale supports them. *Id.* at ¶¶ 53-60. However, there was no rational explanation for reserving for police officers

employed with Peoria School District No. 150 certain labor law protections while excluding officers employed with all other school districts from those protections. Economics did not warrant the distinction; nor did anything else. The 2007 Act's deadline, by contrast, is fiscally defensible.

Therefore, this Court should deny TRS' special legislation challenge, hold that the 2012 Act unconstitutionally deprived Piccioli of pension rights bestowed under the 2007 Act and reinstate all retirement benefits Piccioli had earned under Illinois law.

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of the brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(c) certificate of compliance and the certificate of service, is 12 pages.

/s/ *Esther J. Seitz*
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PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On September 6, 2018, the foregoing Reply Brief of Plaintiff-Appellant David Piccioli was (1) filed with the Clerk of the Supreme Court of Illinois, using the Court's electronic filing system, and (2) served by transmitting a copy from my email address to the email addressee listed below:

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Additionally, upon its acceptance by the Court's electronic filing system, the undersigned will hand deliver thirteen copies of the Reply Brief to the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois, 62701.

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