

No. 118585

IN THE SUPREME COURT OF ILLINOIS

IN RE:

PENSION REFORM LITIGATION

(Doris Heaton, et al.,

Appellees,

vs.

PAT QUINN, Governor of Illinois,  
et al.,

Appellants.)

On Direct Appeal from the Circuit Court  
for the Seventh Judicial Circuit, Sangamon  
County, Illinois

No. 2014 MR 1

The Honorable  
JOHN W. BELZ  
Judge Presiding

**MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF**

The Chicago Public Schools, Chicago Transit Authority, and the Chicago Park District (collectively, "Movants") by and through their counsel, and pursuant to Illinois Supreme Court Rule 345, respectfully seek leave to file an accompanying brief *amicus curiae* (instant) supporting the position of the Defendants-Appellants in this matter, and in support of this request state as follows:

1. The subject matter of this proceeding concerns the proper interpretation of the Pension Clause in the Illinois Constitution. This Court's interpretation of the Pension Clause will directly impact all the Movants, each of which is confronting its own pension crisis. If the Circuit Court's ruling finding the pension reforms of State-funded pension systems in Public Act 98-599 unconstitutional is upheld, it will threaten pension reform efforts that have been passed, or are urgently needed, by the Movants.

**FILED**

JAN 14 2015

7

**SUPREME COURT  
CLERK**

2. The Movants are governmental agencies and a public school district directly affected by the outcome of this proceeding and are uniquely qualified to provide the Court with a valuable perspective on the issues raised by this appeal, issues which may not be addressed by the other parties.

3. The Chicago Public Schools (“CPS”) confronts a pension crisis of alarming proportions. The teachers in CPS participate in the Chicago Teachers’ Pension and Retirement Fund of Chicago (“CTPF”) which, until the enactment of Public Act 98-599, provided pension benefits identical to those provided participants in the Illinois Teachers’ Retirement System (“TRS”). Any decision by this Court setting the parameters of pension reform for TRS will have a direct and immediate impact on CPS.

4. The Chicago Transit Authority (“CTA”) also experienced a severe pension crisis, but as a consequence of Public Act 95-708, enacted in 2008, it succeeded in solving its crisis by means of greatly increased funding obligations, characterized by both CTA and its employees sharing in the burden of those increased funding obligations. Reforms to CTA’s pension plan have not been subject to litigation to date, but a decision from this Court upholding the Circuit Court’s construction of the Pension Clause will leave those reforms vulnerable to challenge.

5. The Chicago Park District (“CPD”) experienced its own pension crisis, a crisis of such proportions that in 2013 the pension fund in which it participates, the Park Employees’ and Retirement Board Employees’ Annuity and Benefit Fund, was predicted to become insolvent by 2023. CPD worked in cooperation with its collective bargaining units and agreed upon a package of reforms, modifying both funding requirements and benefits, which were enacted into law in 2014 as Public Act 98-0622. As with CTA, these reforms have not yet been challenged, but a

decision from this Court upholding the Circuit Court's construction of the Pension Clause will leave the reforms vulnerable to challenge.

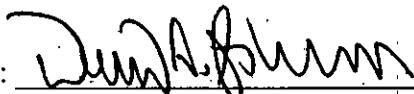
6. The Movants all rely on the same tax base (which is the same tax base for the City of Chicago), and any decision requiring public agencies to assume exclusive responsibility for funding unreformed pensions will directly threaten their ability to deliver essential public services.

WHEREFORE, the Chicago Public Schools, Chicago Transit Authority, and the Chicago Park District respectfully request that this Court grant them leave to file the attached *Amicus Curiae* brief in this matter instant.

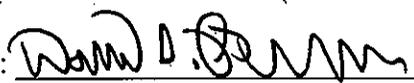
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Respectfully submitted,

**CHICAGO PUBLIC SCHOOLS**

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One of its attorneys

**CHICAGO TRANSIT AUTHORITY**

By:   
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**CHICAGO PARK DISTRICT**

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January 12, 2015

No. 118585

IN THE SUPREME COURT OF ILLINOIS

IN RE:

PENSION REFORM LITIGATION

(Doris Heaton, et al.,

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No. 2014 MR 1

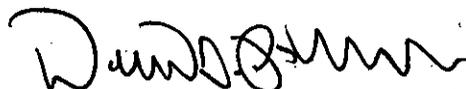
The Honorable  
JOHN W. BELZ  
Judge Presiding

NOTICE OF FILING

To: See attached service list

PLEASE TAKE NOTICE that on January 12, 2014, I caused to be filed with the Clerk of the Supreme Court of Illinois, Supreme Court Building, 200 E. Capitol, Springfield, IL 62701, the attached **Motion for Leave to File *Amicus Curiae* Brief** a copy of which is hereby served upon you.

By:



One of the Attorneys for the Movants

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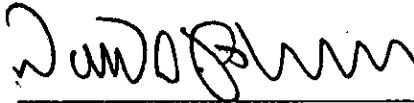
**FILED**

JAN 14 2015

**SUPREME COURT  
CLERK**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that three copies of the foregoing Notice of Filing and Motion for Leave to File *Amicus Curiae* Brief were served upon all parties listed on the attached Service List by depositing the same in the U.S. Mail first-class with postage prepaid prior to 5:00 p.m. on the 12th day of January, 2015.



\_\_\_\_\_  
David A. Johnson

**FILED**

JAN 14 2015

**SUPREME COURT  
CLERK**

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No. 118585

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IN THE  
SUPREME COURT OF ILLINOIS

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*In re: Pension Reform Litigation*

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Direct Appeal Pursuant to Ill. Sup. Ct. R. 302(b)  
from the Circuit Court of Sangamon County, No. 2014 MR 1  
Consolidated with Sangamon County, Nos. 2014 CH 3, 2014 CH 48;  
Cook County, No. 2013 CH 28406;  
Champaign County, No. 2014 MR 207  
The Honorable John W. Belz, Judge Presiding

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**ORDER**

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This matter coming to be heard on motion of the Chicago Public Schools, Chicago Transit Authority and the Chicago Park District (collectively, "Movants") to file a brief *amicus curiae* instant in support of Defendant-Appellants, all parties having been duly notified, and the Court being advised in the premises,

IT IS HEREBY ORDERED:

That leave to the Movants to file a brief *amicus curiae* instant is

GRANTED/DENIED

ENTERED: \_\_\_\_\_

\_\_\_\_\_  
JUSTICE

No. 118585

IN THE SUPREME COURT OF ILLINOIS

IN RE:

PENSION REFORM LITIGATION

(Doris Heaton, et al.,

Appellees,

vs.

PAT QUINN, Governor of Illinois,  
et al.,

Appellants.)

On Direct Appeal from the Circuit Court  
for the Seventh Judicial Circuit, Sangamon  
County, Illinois

No. 2014 MR 1

The Honorable  
JOHN W. BELZ  
Judge Presiding

**BRIEF *AMICUS CURIAE* OF THE CHICAGO PUBLIC SCHOOLS, THE  
CHICAGO TRANSIT AUTHORITY AND THE CHICAGO PARK DISTRICT IN  
SUPPORT OF DEFENDANTS-APPELLANTS**

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January 12, 2015

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## STATEMENT OF INTEREST OF *AMICUS CURIAE*

The Circuit Court's decision finding Public Act 98-599 unconstitutional threatens pension reform efforts that have been passed, or are urgently needed, for the Chicago Public Schools (CPS), Chicago Transit Authority (CTA) and Chicago Park District (CPD). Each of these agencies is charged with providing vital services to Chicago residents, and each is dealing with, or has dealt with, its own crushing pension funding crisis. In cooperation with the unions that represent their employees, CTA and CPD have implemented significant, expensive reforms that have preserved their pension systems and the benefits those plans provide to current and future employees and retirees. Equally important, the reforms have put these agencies' retirement funds on a financially sustainable path to recovery, while preserving the agencies' ability to continue to provide critically important services to their constituents. CPS has not yet enacted pension reform but must do so in order to deal with its own pension crisis, which threatens to undermine its ability to educate Chicago's children. These agencies are therefore uniquely qualified to provide the Court with a valuable perspective on the issues raised by this appeal.

A holding that the protections of the Pension Clause are absolute and never subject to the exercise of the State's police powers likely will undermine CPS's ability to achieve and sustain pension reform. In addition, while the CTA and CPD reforms have not been challenged in court, an absolutist approach to the Pension Clause will put both of these agencies and their successful reform packages at risk of a challenge by one or more participants in their pension funds, and thereby threaten the continued success of the reforms. Thus, the stakes in this matter could not be higher for these agencies, their respective funds, employees and retirees, as well as for the other governmental agencies

that rely on the same tax base, including the City of Chicago. As discussed below, each agency has its own unique financial and operating constraints, and the pension reforms developed by (or under development by) each agency are critical to their continued ability to provide essential services to their many constituents in the City of Chicago.

Because of the far-reaching and serious implications of the Circuit Court's decision for these agencies, we respectfully request that this Court allow and consider this brief. The agencies believe that the Circuit Court's absolutist interpretation of the Pension Clause was in error and that, if adopted, that interpretation will result in disastrous and irreversible consequences, not only for the agencies, but also for citizens of the City of Chicago and the entire State of Illinois.

#### ARGUMENT

**I. A CATEGORICAL RULE THAT THE STATE'S POLICE POWERS CAN NEVER APPLY TO PENSION CONTRACTS WOULD THREATEN THE CONTINUED VIABILITY OF THE CHICAGO PUBLIC SCHOOLS, THE CHICAGO TRANSIT AUTHORITY AND THE CHICAGO PARK DISTRICT AS WELL AS THEIR RESPECTIVE PENSION FUNDS.**

If the Circuit Court's unprecedented holding that the State's police powers can never apply to pension contracts were adopted as the law of Illinois, the consequences could be devastating for the CPS, CTA and CPD. The meaningful pension reform needed by CPS likely would be foreclosed or significantly undermined, and the pension reforms successfully negotiated and implemented by CTA, CPD and the unions representing their employees would be targets for challenge.

CPS, CTA and CPD each face (or have faced) a pension crisis of enormous magnitude and urgency. Each of their pension plans is or was significantly underfunded. A plan that is fully funded (with a 100% funded ratio) has assets sufficient to pay its

accrued liabilities on an actuarial basis. The pension plans of these three agencies, however, have or had funded ratios far below the "at risk" standard under federal law of 70-80%. *See* 29 U.S.C. § 1083(i)(4)(A). In particular, CTA's pension plan had a 37% funded ratio in 2008, which was immediately before the CTA's reform began to have an impact; CPD's plan had a 43% funded ratio in 2012, immediately before reform; and the CPS plan's funded ratio as of June 30, 2014 was 51.5%. Restoring these plans to financial health without pension reform would have required, or, in CPS's case, would require each agency to undertake draconian cost-cutting measures that would significantly impair or eviscerate the critically important services it provides.

Recognizing the severity of the situation, the CTA and CPD, in conjunction with the unions that represent their employees, agreed to pension reforms. The process employed to reach reform and the commitments made by each side are detailed below. Importantly, as is also explained below, these reforms are working: by all appearances – including the improved funded status of each plan – CTA and CPD have solved their pension crisis, to the benefit of not only these agencies and the constituents that rely on their services, but also to their employees and retirees, who now can count on a secure retirement. CPS, by contrast, must achieve pension reform to ensure that it will be able to provide a quality education to Chicago students and to preserve the pensions of its current and future employees.

To date, the CTA and CPD pension reforms have not been challenged in court. If this Court were to hold, however, that the State's exercise of its police powers may never justify pension reform, both sets of reforms would be vulnerable to a legal challenge. The recent lawsuit challenging the constitutionality of Senate Bill 1922, the law reforming

two of the City of Chicago's four pension funds, illustrates this risk. Like the reform packages that saved the CTA and CPD pension systems, Senate Bill 1922 provides a comprehensive solution involving shared sacrifice to an otherwise intractable pension crisis, yet it nevertheless now faces a constitutional challenge.

These agencies have no means other than pension reform to address their enormous, mounting pension obligations without diverting substantial portions of their annual budget away from their core mission of providing education, transportation and recreational opportunities to a public that is counting on them. Each agency is limited in its ability to raise revenue and each relies on the same tax base of Chicago taxpayers. While it may be theoretically possible for these agencies to increase their revenues through additional taxes, the aggregate tax increases necessary to adequately fund these agencies' existing pension obligations (absent pension reform) would be crushing for the City of Chicago and its taxpayers, and likely will result in even greater fiscal challenges for each agency by driving taxpayers out of Chicago. This Court can and should avoid this result by rejecting the Circuit Court's erroneous and draconian rule that, regardless of how dire the circumstances may be, the State cannot exercise its police powers to reform pensions in any manner that impairs or diminishes pension benefits.

**II. A CATEGORICAL RULE THAT PENSION CONTRACTS ARE NEVER SUBJECT TO THE STATE'S POLICE POWER COULD PRECLUDE CPS FROM ACHIEVING DESPERATELY NEEDED PENSION REFORM.**

There is perhaps no more important responsibility of state government than to provide a quality education to all children, and CPS's ability to do so is endangered by its pension crisis. CPS has an overwhelming pension problem. CPS's payment into its pension system was \$613 million in 2014, more than 10% of its operating budget, and

that amount continues to grow exponentially. The rising pension costs grossly outpace revenue increases, and pension costs are the single largest driver of CPS's structural deficit. The pension underfunding crisis has already caused a severe strain on CPS's finances, and, without reform, the situation will become even more dire in coming years. Going forward, CPS simply cannot make its pension payments and provide the level of quality education to its students that they deserve. CPS must be able to reform its pension system. With the education of Chicago's children, many of whom rely on the public school system for their basic needs, at risk, the stakes could not be higher.

**A. CPS's Pension Crisis Has Overwhelmed Its Budget.**

CPS is the third largest school district in the nation serving approximately 397,000 students in more than 600 schools. CPS students are a diverse and vibrant population. Latino and African-American students comprise 85% of CPS students. Sixteen percent of CPS students speak a primary language other than English. Eighty-five percent come from families who are considered low income. A substantial number of CPS's students are transitory or homeless and rely on schools to support their basic needs. Fourteen percent, or over 54,000 of CPS students, qualify for special education services ranging from care for students with mild behavioral and cognitive disorders to those with profound disabilities.

CPS's approximately 22,000 teachers participate in the Public School Teachers' Pension and Retirement Fund of Chicago (CTPF). As recently as 2001, the CTPF had a funded ratio of 100%. By 2004, the funded ratio had decreased to 86%, and by 2013, the funded ratio dropped to 49.7%. This decline is attributable to investment returns below the assumed rates, contributions statutorily set below what is required to cover the

unfunded actuarial liability, plan experience and assumption changes. Under state law enacted in 2010, CPS is required to make an annual contribution to CTPF, based on an actuarial calculation, sufficient to bring its funded ratio to 90% by 2059.

State law also allows CPS to decrease its annual contribution by the amount the State contributes. In recent years, however, the State has been able to contribute only minimally to CPS's pension fund, meaning that CPS has made virtually all required employer contributions. By contrast, teachers outside of Chicago are part of the Teachers' Retirement System (TRS). Even though TRS and CTPF provide nearly identical benefits, the State makes almost all employer contributions for TRS.

In 2010, the General Assembly enacted short-term pension relief legislation for CPS, which provided that CPS's employer contribution for fiscal years 2011, 2012 and 2013 would be determined by statute rather than by the actuaries. The relief afforded by this legislation expired at the end of 2013, resulting in dramatic increases to CPS's annual obligation to fund pensions. CPS's required employer contribution for 2014 increased to \$613 million—\$405 million more than the 2013 statutorily determined amount and more than 10% of CPS's operating budget. CPS's required pension contribution will continue to balloon in coming years: it is predicted to grow to \$634 million in 2015; to \$688 million in 2016; and to \$708 million in 2017. By 2032, CPS is projected to owe more than \$1 billion per year in pension contributions.

CPS does not (and will not) have the funds to pay these amounts. As we explain below, CPS's ability to increase its revenues is limited. In addition, in recent years, CPS has faced a structural deficit, meaning that growth in its basic costs, including salaries, pension and healthcare for teachers and staff, has outstripped the growth in revenues.

Pensions are the single largest driver of this funding gap, and, to close the gap, CPS has undertaken significant cost-cutting measures. For example, CPS cut 34% of its central office staff between 2009 and 2013; laid off 1289 teachers in 2011; cut spending by \$740 million in central office, administration, and operations since 2011; closed fifty schools in 2013; and, in 2014, CPS reduced school budgets by 3.5% (or \$68 million) and is planning a further \$55 million in administrative and operation reductions in 2015.

Notwithstanding these substantial cost-cutting measures, CPS has increasingly had to rely on one-time revenue sources, such as federal funds received pursuant to the American Recovery and Reinvestment Act of 2009 or its unreserved fund balance to assist in closing its annual deficits. For example, CPS used \$513 million in reserves to balance the budget in 2014. In effect, CPS has been using these one-time resources to pay its annual pension contribution, which was \$613 million in 2014 and will be \$634 million in 2015. These one-time options run out after this year, and CPS faces a \$688 million pension payment in 2016.

**B. CPS Has Limited Revenue Sources To Fund The Critical Public Services It Provides.**

Each year, roughly 70% of CPS's operating expenditures are related to employee salary and benefits. The remaining 30% goes to charter school tuition and support for community-based early childhood programs, as well as to non-personnel costs, including supplies, commodities, food, services and other items needed to support schools.

CPS receives its operating revenue from local, state and federal sources.

However, the Board of Education, which is CPS's governing body, has limited means of increasing its revenue. The largest source of revenue—more than 40%—emanates from

local sources, the majority coming from local property taxes levied by the Board. But while the Board has raised property taxes in twenty of the last twenty-one years, its ability to do so is restricted. Since 1994, CPS has been subject to the Property Tax Extension Limitation Law (PTELL), commonly known as the property “tax cap.” PTELL limits the increase in CPS property tax revenue for its non-debt service funds to the lesser of 5% or the current rate of inflation. Because inflation has been low in recent years, CPS’s ability to increase taxes has been limited – to between 1.5% and 3% each year since 2010. To put this in context, CPS’s revenue from property taxes is approximately \$2 billion annually, so each annual increase of about 2% has generated approximately \$50 - \$75 million in new revenue. This is well short of the amount needed to pay CTA’s burgeoning pension obligation, which, as we explain above, currently stands at nearly \$700 million each year and is growing.

At the state level, CPS receives funding determined according to a formula established by the General Assembly, based on each district’s population, local property wealth and other demographics, and categorical funding, which is distributed as “block grants” to CPS. The amount of state aid to CPS peaked in 2010, however, and since then has been reduced to levels below 2008. Thus, while CPS received \$1.7 billion in 2008 and \$1.8 billion in 2010, state funding declined to \$1.6 billion in 2014 and is budgeted to stay the same in 2015. CPS also receives federal funds distributed to it through various federal programs. That revenue is restricted to specific purposes, and CPS has limited flexibility regarding how it is spent.

**C. CPS Must Have The Ability To Reform Its Pension System.**

CPS cannot overstate the importance of pension reform, which is necessary to ensure the stability of the pension fund for the tens of thousands of current employees and retirees that currently depend on it or will depend on it. Reform is also necessary to address CPS's structural deficit and ensure that its limited resources are directed to the classroom. CPS's vision is that every one of its nearly 400,000 students will be engaged in a rigorous, well-rounded instructional program and will graduate prepared for success in college, career and life. It will not be able to fulfill this vision if it is forced to steer resources away from children – many of whom are low-income and at risk – because of its overwhelming obligations to the pension fund. Absent pension reform, CPS will be faced with dire options that include cutting programs such as early childhood education or safe passage (which allows students to safely reach their schools without incidents of violence), reducing the number of teachers and cutting school budgets.

If this Court holds that the State's police powers are not applicable to pension contracts no matter how dire the circumstances, then it will likely exert a significant negative impact on the ability of CPS to obtain and sustain essential pension reform legislation. This unprecedented, absolutist result would severely hamper CPS's all-important public interest of educating Chicago's children, and, equally important, could devastate fund participants because their pensions would not be paid.

**III. A CATEGORICAL RULE THAT THE STATE'S POLICE POWERS CAN NEVER APPLY TO PENSION CONTRACTS WOULD THREATEN THE CRITICAL REFORMS THAT SAVED CTA'S PENSION SYSTEM.**

Millions of riders, many of whom are of limited means, depend on CTA on a daily basis to travel between home and work or school, among other destinations. CTA

thus provides services that are critical to the lives of individuals throughout the Chicago region and to the economic stability of the area. CTA's public transportation services truly are, as Article XIII, Section 7 of the Illinois Constitution recognizes, an "essential public service." Until a few years ago, however, the CTA's ability to continue to provide these services was threatened by the fact that CTA's pension system was desperately underfunded. But CTA and its bargaining units agreed on pension reforms, which went into effect in 2008 and included significant increases in both employer and employee contributions. These pension reforms, which saved CTA's pension system, have not been challenged in the courts (unlike the retiree healthcare provisions). It is not too late to do so, however, and a categorical rule that the State's police powers never apply to public pensions, no matter how dire the circumstances, would leave the CTA's reforms vulnerable to legal challenge. As we now explain, such an outcome would undo the carefully obtained compromise among the stakeholders to the CTA's pension system, and simultaneously devastate the CTA's ability to provide services on which so many people depend.

**A. CTA Provides Critical Government Services Using Limited Sources Of Revenue.**

CTA, an independent governmental agency operated by the Chicago Transit Board, is the nation's second-largest transit system, with a service area of 234 square miles that is distributed among the City of Chicago and 35 suburbs and encompasses a population of more than 3,500,000. CTA provides 82% of all rides on public transportation in the Chicago region, which amounts to nearly 1.7 million rides each weekday and more than half a billion rides annually. Because of state (and to a lesser

extent, local and federal) mandates, CTA provides approximately 76 million rides either free of charge or at greatly reduced rates to seniors, students, and people with disabilities. In short, CTA is the backbone of the region's public transportation infrastructure.

CTA's operating budget for 2014 was approximately \$1.4 billion, more than \$950 million of which went toward personnel-related expenses, including pension contributions. But CTA's revenue sources are limited, and CTA has little ability to materially increase its revenues. What little ability it does have, such as increasing fares, has not only been used but also is subject to the principle of diminishing returns: if CTA increases fares, ridership decreases, cutting into one of CTA's two primary sources of revenue. CTA's only other revenue source is public funding distributed to CTA by the Regional Transportation Authority (RTA) from a combination of Chicago and Cook County sales tax revenue distributed according to a statutorily-prescribed formula, discretionary funding distributed by the RTA, and a portion of the Real Estate Transfer Tax (RETT) collected by the City of Chicago. Both of these revenue sources (fares and various taxes) depend on a strong local economy to generate the tax revenue necessary for CTA to function and, just as important, to provide the employment opportunities that support ridership. Both, therefore, would be directly and adversely affected if real estate and other local taxes are increased to pay pension costs.

**B. CTA's Pension Crisis.**

CTA is unique among other governmental entities in that the Illinois Pension Code requires CTA itself to establish and maintain "a financially sound pension and retirement system." 40 ILCS 5/22-101. That pension system, known as CTA's "Retirement Plan," was formed by agreement of CTA and its unions in 1949, and is

incorporated into the CTA's collective bargaining agreements. The Pension Code also requires that CTA "must make contributions to the established system as required under [the Code] and may make any additional contributions provided for by [CTA] ordinance or collective bargaining agreement." *Id.*

Unlike other public pension funds in Illinois, which are created by state statute and are independent legal entities solely responsible for providing benefits to their members, CTA is ultimately responsible for funding the benefits provided by the Plan. If the Plan runs out of money to pay benefits, CTA might be required to pay those benefits. This makes it imperative that the Plan be healthy, as CTA's ability to make up a significant shortfall in the Plan is limited by the agency's inability to substantially increase its revenues.

In 1994, the Plan had a funded ratio of 87%. As late as 2000, the funded ratio was 80%. But by January 1, 2006, that ratio had dropped to 34%, due in part to new Governmental Accounting Standards Board (GASB) Statement No. 45, which required the Plan to include its retiree healthcare obligations as liabilities for the first time. In March 2007, an audit conducted by the Illinois Office of the Auditor General concluded that the financial condition of CTA pension and retiree healthcare benefits was "extremely poor" and "deteriorating rapidly," to the point that there existed a 75% chance that the Plan would run out of assets by May 2008, something CTA and the Plan's stakeholders, including the unions, understood all too well.

**C. Joining Forces, The Stakeholders In CTA's Pension System Solve the Crisis.**

The solution to CTA's pension crisis which emerged after extended negotiations between the CTA and its unions, came in the form of Public Act 95-708, which became law in January of 2008. The legislation made a number of important changes. It authorized CTA to issue a pension obligation bond in the amount of \$1 billion to deal with the immediate funding crisis; doubled contribution rates for both CTA (from 6% to 12%, with the CTA allowed to credit the debt service on the pension obligation bond against its share of the contribution, up to a maximum of 6%) and its employees (from 3% to 6%); and provided that if, in the future, the funding ratio of the pension system were projected to fall below 60%, an increase in contribution rates sufficient to bring the funding status back to 60% would be required, with the CTA paying two-thirds of the required increased contributions and employees paying one-third.

The legislation had an immediate and dramatic impact. At the beginning of 2008, the funded ratio of the pension system was 37.21%; one year later, that ratio had increased to 75.82%. Over that same one-year period, the actuarial value of assets increased from \$942 million to \$1.96 billion. Nevertheless, the pension system continued to undergo severe stress. Part of this was attributable to the Great Recession in 2008 and 2009 and part was attributable to a decision by the Retirement Plan's trustees to gradually reduce the Plan's actuarially-assumed rate of investment return from 9% to 8.25%. An additional stress factor was the more than 25% decline in the Plan's ratio of active employees to pensioners between 2010 and 2014.

In light of these circumstances, maintaining the minimum 60% funded ratio required a steady increase in the amount of employer and employee contributions. CTA now contributes at the rate of 14.250% (20.250% with the 6% debt service credit) and employees contribute at the rate of 10.125%. During the first six years after Public Act 95-708, CTA contributed just shy of *\$1.5 billion* (not including debt service on the 2008 pension obligation bond) – twelve times the almost \$128 million CTA contributed during the six years preceding Public Act 95-708. This figure is greater than the entire operating budget for CTA in any given year. As for the employees, they contributed a total of nearly \$42 million during the four years preceding Public Act 95-708, and almost \$225 million in the six years since.

**D. If Adopted By This Court, The Circuit Court's Categorical Rule Could Put CTA's Pension Reform At Risk.**

Nearly seven years have passed since Public Act 95-708 saved the Retirement Plan (and the annuities CTA retirees depend on) from insolvency. The solution to CTA's pension crisis was the product of shared sacrifice by both CTA and its employees. To date, CTA's pension reforms have not been challenged in the courts. But that could change if this Court were to adopt the Circuit Court's absolutist interpretation of the Pension Clause. And if Public Act 95-708 were declared unconstitutional, the entire reform scheme (including the significant investments by CTA and its employees) might need to be undone, the Plan's funding picture would deteriorate, and CTA would be required to make unacceptable financial decisions directly affecting the services it provides.

The risk to CTA from such a challenge is compounded by the fact that CTA has invested heavily in the 2008 reforms – \$1.5 billion to date – and it is not clear how those reforms could be undone (and the statutorily required contributions recovered) at this time. The CTA's risk also includes its ongoing obligation to contribute according to the actuarial needs of the pension system and the *additional* obligations CTA would have to assume if the increase in employee contributions is challenged and struck down. It simply is not possible to impose that sort of financial burden on CTA without triggering significant reductions in the level and range of CTA's critical public services. Because CTA's services provide the backbone for much of the Chicago region's economic activity and growth, a reduction in services would also further impair the financial health of other public entities (including the City of Chicago, CPS, CPD and Cook County).

As explained above, CTA's ability to increase its revenues to meet additional funding expenses is extremely limited and dependent on increasing fares (which would decrease ridership) and funding decisions that are outside of CTA's control. But if CTA were somehow able to generate the funds to absorb the costs of saving its pension system without an increase in employee contributions, it could not do so without decimating its ability to carry out critical capital projects. CTA's capital needs are large and immediate, as much of its existing infrastructure is way past its standard useful life. This includes more than 30% of CTA's rail right-of-way; 63 of 145, or 43%, of its stations (16 are more than 90 years old, and 48 are not yet accessible to the disabled); 50% of its escalators; 52% of its rail structures (with an estimated replacement cost of at least \$2.4 billion); 32% of its rail fleet (even after the scheduled 2015 delivery of new rail cars); and 25% of its bus fleet. The maintenance facilities that keep this aging fleet in service are

themselves in need of rehabilitation, and six are more than one hundred years old. To address its capital needs, CTA recently launched \$2.9 billion in capital projects over five years. Postponing these capital projects to fund pensions would only increase the costs of maintaining CTA's aging fleet and facilities.

Accordingly, if Public Act 95-708 could be said to diminish or impair the pension benefits that retirees would otherwise receive (which CTA disputes), CTA should be allowed to establish that Public Act 95-708 is a constitutionally permitted exercise of the State's police powers. Absent such an opportunity, the reforms attained by the CTA and its unions that saved CTA's pension system may be lost. Undoing pension reform now, assuming it is even feasible, would be devastating to the CTA, the millions of riders who depend on it for transportation and the employees and retirees who participate in CTA's pension system.

**IV. A CATEGORICAL RULE THAT THE STATE'S POLICE POWERS MAY NEVER BE USED TO MODIFY A PENSION CONTRACT COULD LIKEWISE UNDO THE CRITICAL REFORMS THAT SAVED CPD'S PENSION SYSTEM.**

Millions take advantage of the benefits and services provided by CPD each year, enjoying parks, green space and the Chicago lakefront, as well as recreational and cultural programs. Like the CTA, the CPD confronted a pension crisis that required immediate and comprehensive reform: by 2012, the funded ratio of its pension plan had fallen to 43%. Faced with this situation, CPD and the unions representing its employees worked collaboratively for two years to agree on pension reform that was codified into law in early 2014. To date, there have been no challenges to CPD's pension reform, but a holding that public pensions are never subject to the State's police powers would leave

CPD's pension reform vulnerable to legal challenge, putting the many public services CPD provides at risk.

**A. CPD Has Limited Revenue Sources To Fund The Critical Public Services It Provides.**

CPD is one of the largest municipal park managers in the nation. It owns more than 8,400 acres of green space, 593 parks, 26 indoor pools, 51 outdoor pools and 26 miles of lakefront, including 23 swimming beaches, and has an annual budget of nearly \$450 million. Consistent with CPD's core mission of bringing children and families into the parks, in 2014 nearly 400,000 people enrolled in the thousands of sports, recreational, cultural and environmental programs that CPD offers. To ensure that these programs and services are available to all, especially those of limited means, CPD maintains low program fees and provides several discount opportunities, including for financial hardship.

CPD has independent taxing and debt issuing authority, but CPD's revenue sources are highly inelastic. Its principal revenue source is property taxes, which account for 58% of its revenue, but are subject to property tax cap limitations (PTELL) that preclude it from increasing taxes from year to year by more than the rate of inflation (which averaged 1.6% between 2009 and 2013). Another 10% of CPD's revenue comes from the State's personal property replacement tax (PPRT), a tax on the net income of corporations that is distributed according to a formula over which CPD has no control.<sup>1</sup>

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<sup>1</sup> PPRT is a barometer of corporate economic health and has been flat for a number of years. The amount CPD collected in 2013 (\$44.2 million) was less than the amounts collected in 2010 (\$44.3 million), 2008 (\$48 million) and 2007 (\$51.6 million). The State's recent practice of diverting revenues from the distribution amounts to satisfy its obligations further precludes CPD's reliance on this revenue source.

CPD's privatized contracts, including those for Soldier Field, the City's harbors and concessions, provide its largest non-tax revenue source and account for 17% of CPD's revenue. It is against the background of these limited revenue sources, the growth of which has been largely stagnant, that CPD confronted its own pension crisis.

**B. CPD's Pension Crisis.**

CPD employees participate in the Park Employees' and Retirement Board Employees' Annuity and Benefit Fund ("Park Pension Fund"). Under Illinois law, employees contribute 9% of their salary to the Park Pension Fund, and CPD's contribution is determined according to a multiplier applied to actual employee contributions made two years prior. Despite rigorous compliance with required contributions by both CPD and its employees, those contributions proved insufficient to sustain the Park Pension Fund's financial health. As recently as 2004, the Park Pension Fund had a funded ratio of 82.6%, but by 2012 that figure had dropped to 43.4%. In 2013 the Park Pension Fund's actuaries concluded that, in the absence of statutory change, the funded ratio would drop each year until 2023, when it would become insolvent.

Insolvency would spell catastrophe for the retirees and beneficiaries who currently receive benefits from the Park Pension Fund and would threaten the retirement income of the active employees who are contributing to it. Like most public pension plans, the Park Pension Fund is solely responsible for providing benefits to its members, and CPD is not responsible for those benefits. 40 ILCS 5/22-404. As a result, the health of CPD's plan is of critical importance to CPD's employees and retirees.

In July 2013 (even as CPD was moving toward a solution to the pension crisis), Moody's downgraded CPD's bond debt and revised its outlook from "stable" to

“negative,” signaling a strong possibility of further downgrades in the future. Moody’s identified CPD’s “growing unfunded pension liabilities” as its principal challenge, and also emphasized the “significant debt and pension obligations” of the City of Chicago, whose tax base is coterminous with CPD’s. In the view of Moody’s, the likelihood of continued growth in unfunded pension liabilities among overlapping governmental entities would “further leverage [ ] the property tax base shared by the city and the district.” The next month, Fitch likewise downgraded CPD’s bond debt and revised its rating outlook from “Stable” to “Negative,” citing “pension-related pressures” as its “top concern.” Although it applauded CPD for its “conservative fiscal management and budgeting” and its “strong” financial position, Fitch warned that “lack of meaningful solutions to both the near- and long-term problems presented by the poorly funded system would lead to a [further] downgrade of the rating.” As a result of these downgrades, CPD is now required to pay more to service its debt, diverting away money that would otherwise be used to fund pension benefits and CPD programs.

**C. Joining Forces, The Stakeholders In CPD’s Pension System Solve The Crisis.**

Faced with a pension system rapidly heading toward insolvency, CPD, its unions and representatives of the Park Pension Fund embarked on a two-year process to identify and build support for a workable solution to the pension crisis. They engaged actuaries to analyze the potential impacts of various potential pension reform measures. The actuaries concluded that even dramatic contribution increases, without other adjustments (such as changes to COLA or retirement age) would not save, but would merely postpone, the Park Pension Fund’s insolvency. Specifically, the actuaries determined that raising

employee contributions from 9% to 12% and more than doubling the multiplier used to determine CPD's contributions would prolong the projected life of the Park Pension Fund by only seven years, to 2030.

Acknowledging that more than increased contributions were needed to solve the pension crisis, the stakeholders, in conjunction with the actuaries, studied various potential reforms, including revisions to or suspensions of the COLA and increases in the retirement age. In the summer of 2013, this process resulted in the following reform package:

- a gradual increase in the employee contribution rate from 9% to 12% by 2019;
- a gradual increase in the multiplier used to calculate CPD's employer contributions from 1.1 to 2.9 by 2019;
- supplemental CPD contributions of \$12.5 million each in 2015 and 2016, followed by an additional \$50 million in 2019;<sup>2</sup>
- COLA suspensions in 2015, 2017 and 2019;
- in all other years, a revision to the COLA from 3% (non-compounded) to the lesser of 3% or one-half of the increase in CPI-U; and
- for employees younger than 45 as of January 1, 2015, an increase to the retirement age for obtaining an unreduced pension from 50 to 58.

The actuaries confirmed that this package would bring the Park Pension Fund to 100% funding by 2053. With the full support of CPD, its unions and the Park Pension Fund's representatives, legislation codifying the reform package passed the General Assembly and was signed by the Governor into law as Public Act 98-0622.

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<sup>2</sup> The \$25 million earmarked for these supplemental contributions was available to CPD only because it had previously set aside that amount in its long-term obligation reserve for this very purpose, in anticipation of pension reform.

The impact of these reforms was direct and immediate. Without pension reform, the funded ratio would have been 40.5% at the end of 2013; instead, the funded ratio was 45.4%. This improvement does not reflect the substantially increased contributions that CPD will make in the coming years. For example, as a result of the increased multiplier and the supplemental contributions, CPD's payments will go from \$11.2 million in 2014 to \$30.5 million in 2015, an increase of 170%.

**D. If Adopted By This Court, The Circuit Court's Categorical Rule Could Put CPD's Pension Reform At Risk.**

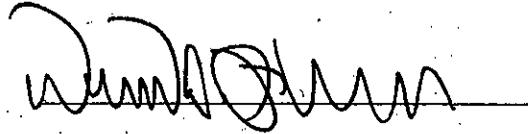
Like CTA, the CPD addressed its pension crisis through significant and thoughtful efforts of all involved stakeholders. If this Court were to hold that the State may never use its police powers to reduce pension benefits, the effect on CPD, its employees and retirees and those who use CPD's services could be devastating. Moody's and Fitch likely would further downgrade CPD's bond debt, and the costs to CPD of servicing that debt would again increase. The combination of higher borrowing costs and limited ability to increase revenue would necessarily result in reductions to the important public services the CPD provides. And the pension reforms that were successfully negotiated and implemented would be vulnerable to legal challenge, which in turn would threaten to put the Park Pension Fund back on the path to insolvency.

**CONCLUSION**

For the foregoing reasons, as well as those contained in the briefs of Defendants-Appellants and other *amici* supporting Defendants-Appellants, this Court should reverse the decision of the Circuit Court, hold that the State's police powers apply to pension contracts as they do to every other contract, and remand to the Circuit Court for further

proceedings to determine whether the State properly exercised its police powers by enacting Public Act 98-599.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David A. Johnson", written over a horizontal line.

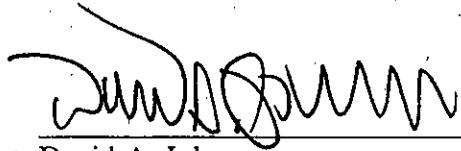
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January 12, 2015

## SUPREME COURT RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Supreme Court Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 22 pages.

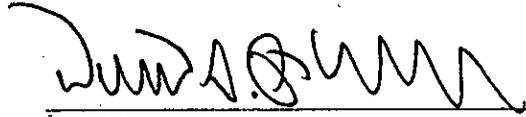


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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that three copies of the foregoing Brief *Amicus Curiae* of the Chicago Public Schools, the Chicago Transit Authority and the Chicago Park District In Support of Defendants-Appellants were served upon all parties listed on the attached Service List by depositing the same in the U.S. Mail first-class with postage prepaid prior to 5:00 p.m. on the 12th day of January, 2015.



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